ADMINISTRATIVE LAW

JULY 1956

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ADMINISTRATIVE LAW SECTION of AMERICAN BAR ASSOCIATION

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Professor of Law, New York University School of Law

PROGRAM OF ANNUAL MEETING

Dallas, Texas

All Meetings Will Be Held at the Embassy West Room, Statler-Hilton Hotel

Saturday, August 25

12:30 P. M. Luncheon Meeting of Council *

2:00 P. M. Meeting of Council

Sunday, August 26

10:00 A. M. Meeting of Council

12:30 P. M. Luncheon Meeting of Council

2:00 P. M. Meeting of Council

* Chairmen and Vice-Chairmen of Section Committees are invited to all Council meetings, including luncheons.

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Nothing contained herein shall be construed as the action of the American Bar Association unless the same shall have been first approved by the House of Delegates or the Board of Governors.

Monday, August 27

2:00 P. M. General Session:

Does Congress Know What Goes on in the Administrative Process?

Rufus G. Poole, *Chairman, presiding*

Congress' Duty to Supervise Administrative Procedure and Practice

Bernard Schwartz, Director of the Institute of Comparative Law, New York University School of Law, New York City

Report on H. Res. 462 to Establish a Committee on Administrative Procedure and Practice

Hans Klagsbrunn, Washington, D. C.

State Experiments in Overseeing Administrative Procedure

Samuel Estep, Director of Legislative Research, University of Michigan, Ann Arbor, Michigan

Appointment of Nominating Committee

5:30 P. M. Section Social

Tuesday, August 28

10:00 A. M. General Session:

What is Currently Wrong With State Administrative Procedures?

Rufus G. Poole, *Chairman,* and E. Blythe Stason, *Vice-Chairman,* presiding jointly

The Model State Act: Its Purposes and How it is Worked in Michigan, Missouri and Wisconsin

Frank E. Cooper, Detroit, Michigan

Administrative Law and Procedure in California

Frank C. Newman, Berkeley, California

Panel Discussion: **Current Problems in State Legislation on Administrative Procedure**

Panel Members:

Frank E. Cooper, *Chairman*
John W. Cragun, Washington, D. C.
Whitney R. Harris, Dallas, Texas
Maurice Merrill, Norman, Oklahoma
Frank C. Newman, Berkeley, California
Horace Russell, Chicago, Illinois

2:00 P. M. General Session

Rufus G. Poole, *Chairman, presiding*

Report of the Chairman

Report of the National Committee

Action of the Special Committee on Legal Services and Procedure, ABA, to Secure Fair Administrative Process

Ralph Fuchs, Washington, D. C., presiding

A Revised Copy of Federal Administrative Procedure (Resolution 2); E. Blythe Stason

The Proposed Office of Administrative Procedure and Legal Services (Resolution 3); Trowbridge vom Baur and Arnold Levy

The Proposed Specialized Courts (Resolutions 4 and 4.1); John W. Cragun

Legal Representation (Resolution 5); William B. Jones

Reports of Other Committees

Report of Nominating Committee and Election of Officers and Council Members

Wednesday, August 29

10:00 A. M. General Session:

Any Unfinished Business

The Drafting of the Code of Federal Administrative Procedure—An Open House for Suggestions to the Drafting Committee

Members:

E. Blythe Stason, *Chairman*
Raoul Berger
J. D. Bond
Frank E. Cooper
Whitney R. Harris
Hans Klagsbrunn
Courts Oulahan
Robert McConnaughey

CHAIRMAN'S PAGE

In accordance with custom, this issue of the *Bulletin* is made up of the program for the Annual Meeting and reports of various Section committees.

The Steering Committee for the Special Committee on Legal Services and Procedure has requested the Section of Administrative Law to prepare an initial draft of legislation to implement Resolution 2 which, among other things, will require the drafting of a comprehensive code of Federal administrative procedure. The Section's responsibility in this matter will end in the presentation to the Advisory Group on Resolution 2 of a draft of such legislation. That Advisory Group, of which I am chairman, consists of E. Blythe Stason as the Section's representative, and Richard S. Doyle, Bernard J. Segal, The Honorable Walter Bastian, and E. Oscar Berry. The Advisory Group must report to the Special Committee on or before November 1, 1956.

At the Council meeting in Washington on May 27, 1956, it was decided that it would be impossible to pass upon a draft at the Annual Meeting of the Section and that such a draft would have to be considered at a special Council meeting to be held late in September or early in October. In order that the Section membership may participate in passing upon such a draft, it was decided that the draft should be prepared in time to be distributed among the membership before that special Council meeting. Section members will be invited to make comments on the draft and to attend the special meeting.

At the Council meeting in May, a seven-member drafting committee was named, composed of E. Blythe Stason, chairman, Raoul Berger, J. D. Bond, Frank E. Cooper, Whitney R. Harris, Hans Klagsbrunn, Robert McConnaughey, and Courts Oulahan. This drafting committee is expected to have a draft of the code of Federal administrative procedure prepared shortly after the Annual Meeting. On Wednesday, August 29, at the Annual Meeting, Dean Stason and the drafting committee will hold open house to receive any technical suggestions on matters of draftsmanship from any interested Section member.

The Section also has representatives on resolutions relating to the proposed Office of Administrative Procedure and Legal Services, Proposed Specialized Courts, and Legal Representation. The Section representatives on these advisory groups are scheduled to report to the Section on Tuesday afternoon, August 28.

H. Res. 462 to establish a standing Committee on Administrative Procedure and Practice implements the position of the Association based on the recommendation of this Section, as set forth in the last issue. Hearings were held before a subcommittee of the House Committee on Rules on May 22, 23 and 24. The witnesses included former ABA presidents Cody Fowler and Robert G. Storey; ABA President-Elect David F. Maxwell; the nominee for Chairman of the House of Delegates Charles S. Rhyne; Judge David Peck, Presiding Justice of New York's Supreme Court Appellate

Division, First Department; Bernard Schwartz, Director of the Institute of Comparative Law, New York University, and your chairman and vice-chairman. As we go to press, we do not know whether any action will be taken on this during this session of Congress. However, it gave birth to the subject for the first general session at the Annual Meeting—"Does Congress Know What Goes On in the Administrative Process?"

RUFUS G. POOLE
Chairman

COMMITTEE ON AGRICULTURE

This Committee held its only meeting at Chicago during the mid-year meeting of the House of Delegates. It was well attended and the matters before the Committee were fully discussed. An interim report was made to the Council of the Section. Members of the Committee during the past year by correspondence and personal contact with each other have given consideration to the subjects referred to it by the Section and the National Committee.

Impact of Hoover Commission and Task Force Reports on Procedures in the Department of Agriculture.

The most important general subject before this Committee and in fact before the Section of Administrative Law is, of course, the legislation now pending or to be proposed to implement the reports of the President's conference on Administrative Law and the Hoover Commission and of its Task Force on Legal Services and Procedure. Prior to the mid-year meeting in Chicago practically all of the activities of the Committee related to the study and consideration of this subject. Extensive comment upon and evaluation of the effect of the proposed changes was received from the office of the General Counsel of the Department. This information was of an objective character and was most helpful to the Committee.

The former Committee (1954-1955) then the Committee on Agriculture, Food, Drugs and Related Subjects had devoted considerable time to the same subject. Its report to the National Committee and the Section was carefully prepared and well presented. Our Committee was also cognizant of the fact that the House of Delegates had considered the same subject and had appointed a Special Committee of which our fellow member and delegate, Ashley Sellers, was Chairman and that this Special Committee was to report its recommendations to the House of Delegates at the mid-year meeting.

The 1955 report of our predecessor Committee was published in abbreviated form in the Administrative Law Bulletin (July issue, 1955). The full report approved, as does this Committee, many, in fact most, of the recommendations contained in the Hoover Reports. However, the respects in which the former Committee suggested modifications are of utmost importance to the vast range of departmental administrative proceedings and as shall be subsequently pointed out, your present Committee suggests certain important additional modifications. We agree that it would not be desirable to subject to general statutory controls functions of the Department of Agriculture with respect to public property, loans, grants, benefits or contracts. The present Committee also believes that it would be undesirable as recommended in the Hoover Commission and Task Force reports (H. C. 33(c) and T. F. 35) to require in all departmental proceedings in which opportunity for hearing is provided by statute the same procedural standards as relate to adjudicatory or quasi-judicial proceedings.

This Committee is of the opinion that it is necessary to exclude from formal rule-making procedures, rule-making under various agricultural laws where the action is legislative in character and by reason of seasonal or similar characteristics of the problems involved and of the data necessary for determinations, departmental action

has to be compressed within a short period and the delay inevitably incident to formal rule-making or adjudicatory determinations would make the legislation inoperable.

The former Committee believed it wise to subject to the formal adjudicatory hearing procedure all proceedings in the Department of Agriculture where hearings were required or provided for by the applicable statute. The test proposed was the statutory provision for a hearing before promulgation of an order.

In general the recommendations of the Special Committee of the ABA to the House of Delegates at the mid-year meeting (February, 1956) were in accord with the conclusions or recommendations contained in the report of our predecessor Committee. Some departure was indicated by statements in the recommendations that legislative-type hearings should not be subjected to the formal procedures. But again the only test suggested was:—Did the Act require a hearing? The present Committee believes that such a test is impractical and would in many cases not only thwart the real intent of Congress but also prove to be damaging to the entire program for the improvement of federal administrative procedure. The Committee believes that the test should be a functional one, such as the Supreme Court has itself employed. In the first decision in the *Morgan cases,* 298 U. S. 468, l. c. 479, 80 L. Ed. 1288, l. c. 1294 the court was reviewing the procedural requirements arising under the Packers and Stockyards Act of 1921, 7 U. S. C. § 210. The court said:

> "What is the essential quality of the proceeding under review, and what is the nature of the hearing which the statute prescribes?
>
> "The proceeding is not one of ordinary administration, conformable to the standards governing duties of a purely executive character. It is a proceeding looking to legislative action in the fixing of rates of market agencies. And, while the order is legislative and gives to the proceeding its distinctive character (Louisville & N. R. Co. v. Garrett, 231 U. S. 298, 307, 58 L. Ed. 229, 240, 34 S. Ct. 48), it is a proceeding which by virtue of the authority conferred has special attributes. The Secretary, as the agent of Congress in making the rates must make them in accordance with the standards and under the limitations which Congress has prescribed. *Congress has required the Secretary to determine, as a condition of his action, that the existing rates are or will be 'unjust, unreasonable, or discriminatory'.*
>
> "If and when he so finds, he may 'determine and prescribe' what shall be the just and reasonable rate, or the maximum or minimum rate, thereafter to be charged. That duty is widely different from ordinary executive action. It is a duty which carries with it fundamental procedural requirements. There must be a full hearing". (Emphasis ours.)

It is to be noted that the reference to a hearing under the Packers and Stockyards Act (Section 310) was "whenever after full hearing upon a complaint made as provided". In *United States* v. *Wrightwood Dairy Company,* 127 F. 2d 907, the 7th Circuit Court of Appeals in a case which had once been before the Supreme Court of the United States (62 S. Ct. 523), used the following significant language with respect to the provisions for "an opportunity for hearing" in respect to orders approving marketing agreements under the Agricultural Marketing Agreement Act. A contention had been raised by the defendant in that case that the hearing granted in accordance with the usual practice of the Secretary of Agriculture in the administration of that Act was not sufficient from a procedural standpoint. The Court said (127 F. 2d, l. c. 910):

> "The contention rests upon a misunderstanding of the purpose and requirements of the type of hearing provided for by Section 8(c)(3) of the Act. The object of such a hearing is not only to afford the individuals the opportunity of airing their objections to the proposed scheme of things, but is also to give the administrators the chance of ob-

taining information which might have been overlooked or otherwise not available to them.

"The realities of the situation are clear. In the case of many proposed agreements, hundreds of people may be presented at a hearing and every individual would be equally desirous of insuring the maximum protection to his own interests. If the equivalent of court proceedings were granted to each person, or even to groups, the hearing would be unwieldy and not susceptible to a satisfactory conclusion. Obviously, a more workable balance must be struck between administrative efficiency and the protection of individual rights".

This Committee and the former Committee do not, we believe, fundamentally differ upon the question of whether or not in legislative-type proceedings all of the formality properly required in adjudicatory or quasi judicial proceedings should be required. Both the former Committee and this Committee as well as the Special Committee upon that matter appear to be in harmony. The difference arises only in connection with determining what is legislative. This Committee believes, as the former Committee apparently did not believe, that Congress does not answer the question when it simply provides for a hearing. Although the proceeding may be essentially legislative in character Congress may very wisely require a hearing before an order is released. In view of the variant expressions relating to hearings in the different statutes referred to it is clear to us that Congress did not attach any particular procedural significance to the provisions for a hearing. As Mr. Justice Hughes pointed out in the opinion in the first Morgan case above quoted, two questions are really involved. First, what is the essential quality of the proceeding under review? And second, what is the nature of the hearing which the statute prescribes? This Committee believes that in the formulation of legislation to implement the recommendations of the Special Committee on Legal Services and Procedure that emphasis so far as the application of formal rules of procedure is concerned should be placed upon the first of these elements, mainly "the essential quality of the proceeding". And the mere use of the word "hearing" as the opinion points out does not answer the second question.

It is the understanding of this Committee that when the recommendations of the Special Committee were presented to the House of Delegates, the discussion in the House of Delegates indicated that that body shared the view indulged by this Committee, namely, that in any legislation drafted to implement its recommendations, exceptions or exemptions from the general requirements as to adjudicatory or formal rule making procedure should be granted in favor of legislative-type proceedings whether under the Marketing Agreement Act or arising under other existing statutes requiring the exercise of administrative authority of a legislative character. This Committee therefore recommends that in the drafting of the proposed new Federal Administrative Code to implement Resolution No. 2 of the House of Delegates, exception or exemption from the formal rule-making or adjudicatory administrative procedure otherwise provided and in lieu thereof specialized treatment be given in respect of procedure not only under the Agricultural Marketing Agreement Act of 1937 but also a number of other highly important acts which authorize hearings in proceedings that by reason of the factors involved should be recognized as essentially legislative in character.

In the view of this Committee, a legislative distinction can be drawn between the character or the essential quality of the proceedings authorized. This distinction exists from the very initiation of the proceeding. The legislative-type proceeding leads to a result effective only in futuro—it does not declare or find past action to have been unlawful. Always in adjudication and often in other types of formal rule-making the legality or illegality of past action is determined. The notice for legislative determinations required is a public notice addressed to the general public or to whomever it may concern. There are no named parties. In contrast with this there are always named re-

spondents in the quasi-judicial or adjudicatory proceedings. The practical situation differs in that in the legislative-type proceeding necessity requires generally much greater expedition in making the determinations. Seasonality very frequently demands immediate and prompt action whether it be in the fixing of agricultural quotas or amendments in Marketing Agreements. The character of evidence differs and the treatment of that evidence is required to be on a wholly different basis. In the legislative-type proceeding anyone may but no one has the absolute right to offer evidence or present arguments. If in the exercise of the broad discretion of the authority itself or the hearing officer, the evidence offered is pertinent to the subject matter—it may be received from any source. In the quasi-judicial proceeding the respondents and each of them have the absolute right to offer pertinent evidence and the source of the evidence is not a matter for the exercise of discretion by the authority. The legislative-type order affects all alike, named or unnamed, but only as to the future. The quasi-judicial or disciplinary order or adjudicatory order determines the legality or illegality or the propriety or impropriety of past actions of named respondents and except as precedent operates only as to those who are made parties to the proceeding. In the legislative-type proceedings there are many instances where wise action on the part of Congress would require a hearing but this requirement does not mean an adjudicatory hearing as a matter of law. It may well be that Congress sees fit even in legislative-type hearings to require a record of the hearing to be kept on the basis of which proceedings for review initiated by individuals affected may be predicated. This is certainly within the range of Congressional discretion but it does not, ipso facto, alter the essential quality of the proceeding. Finally, in the truly legislative-type proceeding the order or finding made cannot be the basis for the imposition of any penalty upon any individual for past action. Such is not the case in other types of formal rule making or adjudicatory proceedings. Your Committee further recommends in this connection that when the Committee in charge of drafting the new proposed Federal Administrative Code and implementing the recommendations of the House of Delegates has proceeded sufficiently to have a working draft for discussion purposes, your Committee be afforded an opportunity to examine the same for the purpose of suggesting any modifications thereof if any be necessary to provide for the necessary treatment of administrative procedure in connection with the legislative-type proceedings in the Department of Agriculture whether they arise under the Agricultural Marketing Act of 1937 or under any of the other acts hereinbefore mentioned which entrusts administrative authority to the Department of Agriculture or to the Secretary of Agriculture.

Other Legislation

This Committee was charged with the duty of investigating the situation with respect to the provisions for administrative procedure contained in the present draft of the so-called Dairy Self Help Bill (S. 930). The former Committee pointed out certain basic defects in the administrative provisions of the pending legislation. Our Committee has conferred with the sponsors of this legislation and an agreement has been reached that the bill will be amended to meet the views expressed by this Section of Administrative Law. No action will be had on the bill at this session of Congress. It is the Committee's understanding that extensive revisions in its substantive features will be made before re-introduction in the next Congress. The Council of the Section of Administrative Law after consideration a year ago of the report of the predecessor Committee deferred action pending a further report. The bill provides for a presidentially appointed board to establish price levels for dairy products applicable to sales to governmental agencies and to governmental purchasing and other operations in the field of dairy products. There were three aspects of the bill to which the predecessor committee objected. We shall refer to them in order:

> As to the limitation of membership on the Board to producers, the Committee on Agri-

culture considers this matter to be outside of the jurisdiction of the Section of Administrative Law.

As to the absence of mandatory notice and hearing requirements in the establishment of price levels, proponents of the legislation have agreed to work out with the committee prior to re-introduction of the bill modifications conforming to appropriate requirements of the Administrative Procedure Act.

As to the provision that the Secretary of Agriculture and the Board, both agencies in the executive branch, may resort to the courts where a controversy between them exists as to any price level to be established, the proponents of the legislation have agreed to work out with the Committee prior to re-introduction of the bill modifications to meet these objections, as well as modifications of the procedural requirements with respect to determination in collection of stabilization fees on dairy products in the procedural requirements for producer referanda on placing the act in effect.

Soil Bank Act—S. 540

The so-called Soil Bank Act was introduced, considered in committee, passed, vetoed and then in modified form again passed and has become law. This Committee was not authorized or directed by the National Committee or by the Council to act or in any way to take part in or to report upon the administrative provisions of this important legislation. In fact, the Committee did not under all the circumstances consider it desirable to do so. The character of the legislation, the urgency of Congressional action upon it, the type of administrative provisions which were essential to make it operable, were not such as to recommend any activity by members of this Committee in respect to this legislation. We have reviewed the final draft of the Act and it would appear that the administrative provisions are operable, practical and unless one is committed to the theory that so wide-spread has become the policy of the government through the medium of grants-in-aid and the encouragement of action or non-action by individuals through governmental benefits of one character or another, that the allotment of grants and benefits should itself be subjected to formal administrative procedures and to judicial review in particular instances of arbitrary action, there was no need to give attention to the general administrative procedures provided. An exception to this applies to provisions relating to the termination of contracts once entered into by the Secretary of Agriculture with individual farmers. In respect to contract termination the Act provides for informal hearings before local and State Committees where the farmer affected requests an opportunity for such a hearing within a specified length of time. The Act contains, however, a saving provision in that where the farmer feels aggrieved by the final determination he may obtain judicial review of the determination by filing a complaint with the United States District Court for the district in which the land covered by the contract is located within 90 days after the delivery of service of the notice of the contract termination requesting the court to set aside the determination. The action in the United States District Court shall be a trial *de novo* to determine whether there has been such a violation of the contract which would warrant termination of the contract. Where the farmer does not seek judicial review of the state committee's determination within the 90 day period allowed therefor the state committee's determination becomes final and conclusive. In view of the inclusion of this provision for a trial *de novo* in the District Court of the issues arising in respect to contract termination, we find no procedural objections to the Act.

Administrative Rules and Regulations

The Committee, in order to emphasize the importance of Rules of Practice and the problems in respect to procedures that may frequently arise, desires to comment on rules of practice governing proceedings under the Packers and Stockyards

Act. (Title 9, Ch. II, Pt. 202, of the Code of Federal Regulations, 1949 Edition).

In addition to a few provisions of a general nature, these rules are divided into the following three sections:

(a) Rules applicable to disciplinary proceedings;

(b) Rules applicable to rate proceedings;

(c) Rules applicable to reparation proceedings.

Under certain conditions, the latter two sections permit intervention, but there is no such provision in the section dealing with disciplinary proceedings. Certain developments during the past year would indicate that some consideration should be given to attempting to secure amendment of the rules of practice to allow intervention in certain types of disciplinary cases.

Normally, of course, a disciplinary proceeding is one where the government is proceeding against someone for violating the Act or the regulations, and the question presented for decision is whether or not the respondent did or did not do certain prohibited acts. In the ordinary case, therefore, we might say that intervention would not be desirable from any point of view.

In two recent cases—*Producers Livestock Marketing Association* v. *Denver Union Stock Yard Company,* P. & S. Docket 2176, and *In Re: Frank A. Berigon, et al.,* P. & S. Docket No. 2165, there was however, little or no question as to the acts performed by the respondents—the question is whether or not such acts are unlawful, unreasonable, or discriminatory under the Act or the regulations.

It is the view of this Committee that intervention should be permitted, therefore, in the latter type of disciplinary proceeding. And the question at once arises as to whether or not general provisions of the Act should not receive implementation or interpretation by substantive rules and regulations developed after and as a result of formal rule making proceedings. It presents the old and debatable question as to whether or not it is best for the administrative agency to develop rules of action by precedent in accord with common law tradition or develop them by codification in the form of general rules and regulations.

Conclusion

This Committee does not desire that this Report be interpreted as expressing the opinion that administrative procedure in the Department of Agriculture is not susceptible of substantial improvement. It does believe that legislation requiring changes in present practices should be predicated upon a realistic appraisal of the essential quality and character of the many agricultural laws the Secretary of Agriculture is charged with the duty of administering.

For the whole committee,

Respectfully submitted,

JOHN B. GAGE
Chairman

FREDERIC P. LEE
Vice Chairman

COMMITTEE ON FOOD AND DRUGS

Although the Committee has been inactive, I have followed closely a legislative development involving a significant procedural matter which might properly be considered by the Section.

A number of bills have been introduced in the present Congress proposing an amendment to the Federal Food, Drug, and Cosmetic Act regulating the use of additives in foods with the purpose of excluding substances which might create hazards to health.

A basic dispute has arisen between the food, drug and packaging industries and the Food and

Drug Administration (FDA) concerning the method or procedure of enforcement to be adopted in the legislation.

At hearings in the latter part of January and in February, 1956, before the House Interstate and Foreign Commerce Committee, FDA supported the prior licensing type of legislation contained in the recently enacted Pesticide Chemicals Amendment to the Food, Drug and Cosmetic Act, which provides for review by the United States Circuit Courts of Appeals of FDA administrative action refusing to approve a proposed additive.

Industry, on the other hand, was uniformly in favor of provisions which contemplate submission to FDA of pretesting data on the safety of proposed additives, the evaluation of such data by FDA within a specified period of time, and notification to persons submitting such data whether, in FDA's opinion, the additive has shown to be safe for use under the conditions of its intended use. Either FDA (the Secretary of Health, Education and Welfare) or persons submitting the data could institute declaratory judgment actions in the United States District Courts to decide the question of safety. The additives could not legally be used pending the decision of the Court.

FDA is joined by representatives of the United States Courts in opposing the declaratory judgment procedure. FDA has raised questions of constitutionality with respect to this procedure which require consideration.

It is anticipated that no action will be taken on the proposals during the present session of Congress. It seems probable that some compromise will have to be worked out between FDA and industry. If there is any procedure by which the section can act on the matter between the annual meeting in Dallas and the beginning of the next Congress, it would be worthwhile to formulate a position.

For the Committee,

EDWARD BROWN WILLIAMS, *Chairman*
ALBERT E. STEPHON, *Vice-Chairman*

COMMITTEE ON HEARING EXAMINERS

Recommendation

The Committee on Hearing Examiners recommends that the Council of the Administrative Law Section adopt the following resolution:

WHEREAS, AND INASMUCH AS, the House of Delegates of the American Bar Association on February 20, 1956, adopted a report of the Special Committee on Legal Services and Procedure dated January 31, 1956, in which report the Special Committee had recommended that:

(a) All agency hearing officers, other than agency members, should be designated Hearing Commissioners,

(b) There be established within the Executive branch of the Government, but independent of any department or agency thereof, an office of Administrative Procedure and Legal Services having major functions and divisions including, among others, a Division of Hearing Commissioners to appoint, assign and administer revised laws governing Hearing Commissioners, and

(c) To assure the competence and independence of judgment of Hearing Commissioners, statutory provision, as explicit as practicable, should be made for their tenure, status, compensation, assignment and grounds for removal and for "grandfather" rights for incumbent trial examiners, and

WHEREAS, AND INASMUCH AS, on February 21, 1956, the House of Delegates adopted a resolution advocating the inclusion in pending legislation of an amendment to Section 11 of the Administrative Procedure Act which would provide that Federal Hearing Examiners should be compensated at Grade GS-18,

RESOLVED, that Council of the Administrative Law Section advocates that legislation, of the

character recommended by the Special Committee, should specifically provide that

1. Anyone holding the position of a trial examiner at the time such legislation becomes effective, who shall have been appointed in accordance with the provisions of the Administrative Procedure Act, shall be continued as a Hearing Commissioner thereunder without further proceedings.

2. Thereafter, only such persons shall be eligible for appointment as Hearing Commissioners as are members of the Bar, have had seven years legal experience subsequent to their admission to the Bar and otherwise meet such minimum qualifications of capacity and experience as such Division of Hearing Commissioners may prescribe to assure that high competence and independence of judgment essential to the proper discharge of their functions as Hearing Commissioners, including, among others, the ability

(a) To preside at and control hearings with firmness and fairness,

(b) To analyze and evaluate evidence,

(c) To interpret and apply legal authorities and precedents,

(d) To arrive at decisions objectively and on the basis of evidence, and

(e) To write with clarity and conciseness.

3. A Hearing Commissioner shall serve during good behavior, subject only to his being removed from office, without his consent, by order of the Division of Hearing Commissioners for good cause established and determined by it (in strict accordance with such procedures and standards as it shall by regulation prescribe) after opportunity for a full and fair hearing and upon the record; the affected Hearing Commissioner shall have the right to maintain court proceedings for the cancellation of any such order; the Court shall affirm such order if the preponderance of record evidence establishes that such Hearing Commissioner has failed to discharge the functions of his office with competence, objectivity or independence of judgment, and

4. A Hearing Commissioner shall be assigned to a particular agency on a continuing basis, subject only to his transfer from time to time between agencies as the Division of Hearing Commissioners may determine urgently to be required in the interest of efficiency of government operation; within any particular agency, Hearing Commissioners shall be assigned to cases in strict rotation, subject to such conditions with respect to practicability as the Division of Hearing Commissioners may by regulation prescribe.

Respectfully submitted,

For the whole Committee

ARNOLD LEVY
Chairman

J. EARL COX
Vice-Chairman

Comment:

"While I concur generally in your report of the Committee on Hearing Examiners, I feel that I must call attention to the fact that the resolution passed by the House of Delegates on February 21, 1956 circumscribed the action of our Committee and that in doing so, I feel that it prevented us from making a more realistic report and one that would in the end be better for both the hearing examiners and the Bar generally."

EDGAR WATKINS,
Vice-Chairman

COMMITTEE ON INDIAN CLAIMS

The Committee on Indian Claims was created last year primarily to deal with problems stemming from the prosecution and defense of claims of Indian tribes before the Indian Claims Commission.

The Committee's initial objective was to develop standards and techniques which would simplify the presentation of cases before the Commission and accelerate their handling. Statistical data was gathered to provide a factual basis for discussion.

This work was almost immediately overshadowed by the compelling demands of proposed legislation to extend the life of the Indian Claims Commission, which will expire in April, 1957. In July 1955, the Senate and the House each passed separate bills extending the life of the Commission. The House bill contained a provision empowering the Commission's staff attorneys to act as hearing examiners without regard for the Administrative Procedure Act. While these extension bills were pending, the Department of Justice, asserted, charged with the responsibility of defending the claims, in three separate appearances before appropriation committees, that the United States would be subjected to huge liabilities unless the basic jurisdiction of the Commission was severely narrowed. The views of the Department of Justice finally took the form of a proposal sharply curtailing the Commission's jurisdiction by way of amendment to the House bill containing the objectionable APA feature.

The only hearings on the House bill were held before the Senate Committee on Interior and Insular Affairs. This Committee opposed the APA feature and the attempt to emasculate the jurisdiction of the Indian Claims Commission. The position of the Association was fully supported in the report of the Senate committee. The objectionable APA feature was eliminated, and the bill as reported out provides for a five-year extension of the life of the Commission without impairing its jurisdiction. The bill has not yet been reached for a vote, but we are assured that Congress will act on it before adjournment.

We take this occasion to recommend that the jurisdiction of this Committee be enlarged to include all Indian matters falling within the scope of the Section of Administrative Law, and that the name of the Committee be changed to "Committee on Indian Affairs" to conform to its enlarged jurisdiction. Because of the peculiar place Indians occupy in our political and administrative system, a unique body of law and procedure has developed with respect to administration of their affairs. For example, the jurisdiction of the proposed Committee would extend to (a) administrative problems arising out of the current practice and procedure governing appeals from decisions of field officers of the Bureau of Indian Affairs to the Commissioner of Indian Affairs and the Secretary of the Interior; (b) examination of the contractual relationship between attorneys and Indian tribes and individual Indians, as influenced by existing administrative authority to approve or disapprove such contracts; (c) review of the administrative regulations and practice affecting the attorney-client relationship between Indian tribes and individual Indians and their counsel; and (d) the administrative practice with respect to the interpretation of regulations through the Indian Affairs Manual governing personnel of the Bureau of Indian Affairs.

For the Committee,

MARVIN J. SONOSKY, *Chairman*
CHARLES H. WOODS, *Vice Chairman*

COMMITTEE ON JUDICIAL REVIEW

The Committee on Judicial Review recommends the adoption on the following resolutions:

1. Resolved, that the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

Be it resolved that the American Bar Association supports the enactment of S. 2223

and H. R. 6682 to authorize the abbreviation of the record on the review or enforcement of orders of administrative agencies by the Court of Appeals, and the review or enforcement of such orders on their original papers and to make uniform the law relating to the record on review or enforcement of such orders.

2. Resolved that the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

> Be it resolved that the American Bar Association recommends to the Judicial Conference that the several United States Courts of Appeals be urged to adopt a uniform rule relating to the review of orders of administrating agencies under which, in cases involving long and complicated records, the court, in its discretion may segregate issues relating to questions of law from those relating to questions of fact and provide that such issues of law be briefed, argued and decided prior to consideration of those issues pertaining to questions of fact.

Reasons for the Recommendations

Recommendation No. 1

S. 2223 and H. R. 6682, which were recommended by the Judicial Conference at a meeting held March 24 and 25, 1955, would add to Chapter 133 of Title 28 of the United States Code dealing with miscellaneous provisions concerning judicial review, a new section, 2112, dealing with the record on review and enforcement by the courts of appeals of orders of administrative agencies. Among the principal provisions of the new section are the following:

> 1. Power would be given to the several courts of appeals to adopt, with the approval of the Judicial Conference of the United States, rules governing the time, manner of filing, and the contents of the record in all proceedings instituted in the courts of appeals to review or enforce orders of administrative agencies unless the applicable statute specifically prescribes these matters. If proceedings have been instituted in two or more courts of appeals with respect to the same order, the agency concerned shall file the record in that one of those courts "in which in its judgment the proceedings may be carried on with the greatest convenience to all the parties involved."
>
> 2. The bill would provide that the record to be filed in the Court of Appeals should consist of (a) the order in question, the findings or report upon which it was based, and pleadings, evidence and proceedings before the agency concerned, or (b) such portions thereof as the rules of the Court of Appeals might require to be included, the agency or any party to the case might consistently with the rules of the court designate, or (c) the court upon motion of a party, or, after a prehearing conference, upon its own motion might by order designate to be included. It might be provided in an appropriate case by stipulation or order that no record need be filed in the Court of Appeals.
>
> If, however, the correctness of a finding of fact was questioned, all of the evidence should be included except such as by stipulation filed with the agency or in the court the parties concerned might agree to omit as immaterial to the questioned finding.
>
> 3. The bill would provide that the agency concerned may transmit to the Court of Appeals the original papers comprising the whole or any part of the record or any supplemental record, otherwise true copies certified by an authorized officer of the agency. Any original papers thus transmitted to the Court of Appeals are to be returned to the agency upon the final determination of the review or enforcement proceeding. Pending the final determination any such papers may be returned temporarily to the custody of the agency concerned, if needed for the transaction of the public business. Certified

copies of papers included may be returned to the agency upon the final determination of the proceedings in the Court of Appeals.

4. Following these general provisions in the bill are a considerable number of sections amending provisions of present statutes relating to the judicial review or enforcement of orders of administrative agencies in order to bring them into harmony with the provisions of the proposed Section 2112.* Under the proposed bill the Court of Appeals would acquire jurisdiction of the proceeding upon the filing of the petition for review, although the record may not be filed until later. This is in accordance with the pattern of the latest congressional enactment on the subject, the act of December 29, 1950 relating to the review of orders of the Federal Communications Commission, and takes it out of the power of administrative agencies which they have under some present provisions to retard the gaining of full jurisdiction by the Court of Appeals by delaying the filing of the record. Various other perfecting amendments of existing statutes are included in the bill.

The purpose of this legislation is stated in the following excerpt from a letter from the Administrative Office of the United States Courts to the Congress

> "It is believed that the bill if enacted will simplify the procedure for the review or enforcement by the Court of Appeals of orders of administrative agencies, will be conducive to economy and expedition in the proceedings and in their determination and will therefore be in the interest of the litigants and the public. It is accordingly hoped that the bill may be favorably considered by the Congress and in due course be enacted."

Hearings on H. R. 6682 have been held by a subcommittee of the House Judiciary Committee, but no action has been taken. No hearings have been held or scheduled on S. 2223 by the Senate Judiciary Committee.

Recommendation No. 2

This recommendation is prompted by the procedure which currently is being used in the United States Court of Appeals for the District of Columbia Circuit in a proceeding to review an order of the Civil Aeronautics Board under Section 1006 of the Civil Aeronautics Act, 49 U. S. C. 646. The proceeding was instituted by the Civil Aeronautics Board in 1951 to determine (1) the future role of the large irregular air carriers and the extent of operations which they should be permitted to conduct and (2) the carriers to receive continued operating authority and the form which that authorization should take. The Board consolidated in this proceeding the various exemption applications then pending, and reopened proceedings on the applications already granted. Approximately 50 carriers were parties to the proceeding. The record made before the Board in

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* The specific statutes which would be amended insofar as the provisions relating to review are concerned, are as follows:

Federal Trade Commission Act
The Clayton Act
Act of July 28, 1916 relating to The Post Office Department (39 Stat. 425)
The Packers and Stockyards Act
The Commodity Exchange Act
The Tariff Act of 1930
The Securities Exchange Act of 1934
The Act of June 18, 1934 relating to Foreign Trade Zones (48 Stat. 1002; 19 U. S. C. 81)
Commodities Act of 1934
National Labor Relations Act
The Federal Alcohol Administration Act
The Public Utility Holding Company Act
The Federal Power Act
The Merchant Marine Act of 1936
The Civil Aeronautics Act of 1938
The Natural Gas Act
The Federal Food, Drug and Cosmetic Act
The Fair Labor Standards Act
The Railroad Unemployment Insurance Act
The Federal Seed Act
The Investment Company Act of 1940
The Investment Advisers Act of 1940
The Hospital Survey and Construction Act
The Sugar Act of 1948
The Internal Security Act of 1950
The Act of December 29, 1950 relating to the review of orders of Federal Agencies (64 Stat. 1130 5 U. S. C. 1032)
The Federal Coal Mines Safety Act

this proceeding totalled approximately 50,000 pages consisting of some 30,000 pages of transcript and approximately 20,000 pages of exhibits. The Board's order was entered on August 19, 1955.

A number of petitioners filed their petitions in the United States Court of Appeals for the District of Columbia Circuit to review the Board's order. They petitioned for a stay of the effectiveness of the Board's order pending judicial review. This order was denied on the grounds that there was not sufficient showing of irreparable injury.

This left the petitioners faced with the Herculean task under the Court's normal procedure of being required to brief and argue numerous issues of fact based upon a transcript of some 50,000 pages. The petitioners felt that the time requirements which necessarily would be involved in briefing and arguing a record of such proportions would defeat the relief which they sought. The petitioners urged this problem upon the presiding judge (Judge E. Barrett Prettyman) at the pre-trial conference held pursuant to Rule 38(k) of the Court's rules. It was in an effort to meet this problem that Judge Prettyman suggested the procedure which was eventually adopted; namely, of segregating those issues of law requiring reference to only a small portion of the record from those issues of fact requiring extensive examination of the entire record.

The procedure to be followed was set forth in detail in the pre-hearing order resulting from the pre-hearing conferences. In this order, Judge Prettyman stated the issues which had been arrived at during the pre-hearing conferences and specified those which would be briefed, argued and decided first. All parties to the proceeding agreed to this procedure.

It is the view of our committee that this procedure may, in appropriate cases, be used to effect a more prompt and economical review of the orders of administrative agencies. We believe that the relative merits of and problems incident to this procedure should be fully considered by both the bench and the bar. The procedure was used in this case with the consent of all parties. However, we believe that it would be appropriate for the court to require the use of such a procedure in cases which lend themselves to this procedure.

It is apparent that the pre-hearing conference would be an integral part of this procedure. It is understood that all jurisdictions now provide for pre-hearing conferences in proceedings involving Federal Administrative Agencies.

The use of an abbreviated record would be a logical supplement to this procedure. The briefing and decision of questions of law during the first phase would require only a minimum record containing little, if any, of the evidence.

For the entire Committee,

JOHN D. CONNER, *Chairman*

COMMITTEE ON MOBILIZATION

The Committee on Mobilization was created pursuant to authorization by the Council at the October, 1955, meeting. Mr. John A. McIntire of the Department of Defense was named Chairman, and Mr. John S. Nolan, Washington, D. C., was appointed Vice-Chairman. The purpose of the Committee is to study procedural aspects of the laws, regulations, decisions, practices, and standby proposals relating to defense mobilization and agencies created therefor. Procedural questions arise particularly in this field in connection with priorities, allocations, licensing, requisitioning, and other emergency actions, and in the judicial review of agency action in these areas.

The Committee held an organizational meeting to discuss the prospective membership of the Committee as well as particular projects which might be undertaken.

The importance of inviting several persons in the Government who are immediately concerned with the planning in the mobilization area was recognized. It was decided that the Committee should follow up the offer of the Office of Defense Mobilization to the former Committee on Emergency Agencies to discuss the pros and cons of

the applicability of the Administrative Procedure Act to various emergency functions. Plans were made for undertaking full scale operation commencing in the fall of 1956. Section members who are interested in working in this area are invited to join the Committee.

Respectfully submitted,

For the Committee,

JOHN A. MCINTIRE, *Chairman*
JOHN S. NOLAN, *Vice-Chairman*

COMMITTEE ON NATURAL RESOURCES AND INTERIOR AFFAIRS

Summary of Developments

For the past several years a chief effort of the Committee has been directed toward the improvement of practice and procedures before the Department of the Interior, particularly in connection with Bureau of Land Management matters. In part as a result of these efforts, the Department promulgated proposed new regulations affecting the conduct of contests, protests and appeals. This was done in March 1955 in the form of proposed "rule making" through publication of the proposal in the Federal Register. Following the submission of further Committee comment, and continued study within the Department, the proposal as amended was printed in the Federal Register on March 27, 1956 to become effective on May 1. This report will discuss these new rules in the light of Committee objectives. Included in this discussion will be a consideration of H. R. 2582, to require public hearings prior to the withdrawal of public lands.

Another area of Committee emphasis has been in the rule-making field. Interior Department adherence to the processes of the Administrative Procedure Act in this regard has been voluntary on a number of occasions, although the Department maintains that under the "public property" exemption in Section 4 of the APA it is not required to follow that statute. H. R. 10837, 84th Congress, 2d Session, which would limit the public property exemption, will be treated herein, together with Committee views.

Under new matter, the Committee is inquiring into the administration by the Bureau of Mines of the Federal Coal Mines Safety Act. The study is continuing. The Committee hopes to be in a position to publish some findings and recommendations in this field during the next year.

Past Committee Reports (See, *e.g.* 5 Administrative Law Bulletin, No. 3, August 1953; 6 Administrative Law Bulletin, No. 4, August 1954) have pointed out troublesome administrative matters in the Department such as the unavailability of records and the serious lag in the inclusion of current decisions into the body of Departmental precedents. Considerable progress in both of these matters was noted.

The foregoing items will be considered under the following headings: Adjudication; Rule Making; Bureau of Mines; Administrative Matters.

A. Adjudication

The new rules of the Department govern appeals to the Director of the Bureau of Land Management, appeals to the Secretary of the Interior from an adverse decision of the Director, "contests" and "protests," and provide for general provisions affecting all of these categories of proceedings. The rules became effective on May 1, 1956.*

Provisions of the rules which are wholly new are as follows:

1. Field Commissioners are provided for, to hold local hearings for the determination of facts, when such a hearing is requested on appeal from decisions of land office managers and ordered by the Director. The Director may set a case for

* Printed in the Federal Register, March 27, 1956. Parts 220, 222 and 223 of 43 CFR are revoked and Part 221 revised to include the new rules. A new pocket supplement to 43 CFR is being printed. In the meantime, reprints of the new rules are available upon application to the Solicitor, Department of the Interior, Washington 25, D. C.

hearing on his own motion. The hearing is limited to the issues specified by the Director. The Field Commissioner will report findings of fact to the Director, who will decide the case.

2. Field Commissioners are authorized to hold field hearings and make decisions in contest cases formerly handled by land office managers.

3. Field Commissioners may rule on admissibility of evidence in hearings, and may hold pre-hearing conferences to reduce and facilitate the work of actual hearings by obtaining stipulations and limiting the number of witnesses where possible.

4. Appeals taken from decisions of land office managers or from Director's decisions must be accompanied by a $5 filing fee. Appeals not accompanied by the required fee will not be considered and the case will be closed finally by the officer from whose decision the appeal is taken. No fees have been required heretofore.

A provision that is not completely new is that notice of appeals from decisions of the manager and of the Director must be filed within 30 days after service of the decision. Appeals not timely filed will not be considered. Heretofore, although the rules did not specifically provide for extensions of time, in practice extensions were often granted for filing appeals from manager's decisions. However, the time for filing appeals from Director's decisions has been strictly enforced for the past several years. To compensate for the new strict time limit, the new rules allow appellants 30 days or more after filing their notice of appeal to state their grounds for the appeal. Previously the grounds had to be stated in the notice of appeal.

Although Committee members gave close attention to all portions of the rules, the chief emphasis was on the question of whether a hearing was to be a matter of right; any hearing requested to be conducted in accordance with the requirements of the Administrative Procedure Act.

The Committee had adopted a middle ground between no hearing and full adherence to the APA, suggesting that a hearing be permitted as a matter of right after an initial decision at the land office level, if a hearing were requested. This Committee position was accepted by the Administrative Law Section at the annual ABA meeting in 1954.

Under Secretary of Interior Clarence Davis,* although inclined "to follow admittedly good administrative practice and see that these hearings are held," pointed to the fact that as many as 140,000 initial decisions on various filings relating to the public lands are made by the Department each year. How many appeals might result should a hearing be accorded as a matter of right could only be estimated, Mr. Davis said, but the situation appeared to be such that if a hearing were accorded

> "... the Department would be confronted with the practical situation of having to seek several million dollars of additional money for administration from the Congress and of probably creating a backlog of cases, where the delays might be just as serious as are the occasional miscarriages of justice resulting from failure to comply with the Act.
>
> "I only want to make it clear that the problem is recognized by the Department; that our basic sympathies are on the side of compliance in every respect with the Administrative Procedure Act; and that where we are not complying, it is only because, first, that Congress has not required it, and, second, that practical administrative difficulties appear at the moment unsurmountable."

The result, in the new rules, is the following:

> "§ 221.6. Hearings on appeals involving questions of fact. Either an appellant or an adverse party may, if he desires a hearing to present evidence on an issue of fact, request that the case be assigned to a Field Commissioner of the Bureau of Land Management for such a hearing. Such a request

* In an address before a joint session of the Administrative Law Section and the Federal Bar Association at the ABA Annual Convention, Philadelphia, August 23, 1955.

must be made in writing and filed with the Director within 30 days after answer is due and a copy of the request should be served on the opposing party in the case. The allowance of a request for hearing is within the discretion of the Director, and the Director may, on his own motion, refer any case to a Field Commissioner for a hearing on an issue of fact. If a hearing is ordered, the Director will specify the issues upon which the hearing is to be held."

Note that the hearing to be accorded at the discretion of the Director of the Bureau of Land Management is restricted to issues to be specified by him and the party requesting the hearing may do so only "to present evidence on an issue of fact."

There follows (Secs. 221.9-221.20) well-defined provisions for the regulation of the hearing before a Field Commissioner. At the conclusion of the proceedings:

> "... the Field Commissioner will send the record and proposed findings of fact on the issues presented at the hearing to the Director. The proposed findings of fact will not be served upon the parties; however, the parties and the Bureau may, within 15 days after the completion of the transcript or the summary of the evidence, file with the Director such briefs or statements as they may wish respecting the facts developed at the hearing. Any findings of fact made or adopted by the Director will be subject to attack in an appeal to the Secretary." (Sec. 221.20.)

Thus, the hearing to be provided is not only to be restricted to issues of fact, upon specification of the Director, but the decision to be rendered upon the issues heard is to be made not by the hearing officer, but by the Director.

The Committee objected to the limitation of the hearing and to the making of the decision by other than the person hearing the evidence. Although Under Secretary Davis considered both of these objections valid, administrative considerations apparently compelled adhering to the limitation which in turn required the decision to be made at the Director's level since the Field Commissioner would not hear the full case.

It is to be noted that the Field Commissioner's proposed findings of fact will not be served on the parties. The reason given—that delay would ensue—is not persuasive. The findings must ultimately be made available because under Section 221.99(d):

> "In any case, no decision on appeal or in a contest shall be based upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal or contest."

It would seem more advisable to serve the Field Commissioner's findings on the parties and limit the time, if necessary, in which objections could be made. This would tend to avoid diffuse briefs and should result in a sharpening of the issues for decision. The collision, if any, on the Field Commissioner's interpretations of the record would then come at the Director's level, where it properly belongs, rather than being removed as of first impression to the Secretary. It does not seem too much to expect that this should also permit the final disposition of more cases at the Director's level, removing some of the burden from the Secretary's office.

In general, the success of the new provisions permitting hearings would seem to depend upon the liberality of the Director in granting hearings when requested (or in setting hearings on his own motion) and in specifying sufficient issues for hearing so as to permit the proceeding to develop fully the crucial areas. In this connection Edward Woozley, Director, Bureau of Land Management stated, when the new rules were released:

> "I am especially pleased with the procedure for holding a new type of hearing on local appeals where appellants should be allowed to bring in witnesses and be heard at the place of origin in order to get facts that may be obtainable in no other way." *

* Bureau of Land Management release, March 28, 1956 (P. N. 96822).

The Committee considers that the new rules are a significant advance and is appreciative of the Department's attention to the suggestions made, a number of which were adopted in whole or in part. The Committee believes that this new set of rules deserves a trial period. The basic premise of the Committee—that there should be some liberalization in the direction of hearings—has been accepted in spirit. We think further advances may be possible but desire to defer further specific recommendations pending the functioning of the new rules in practice.

It should be noted that the provision for hearings, although subject to the discretion of the Director and then limited in scope, is a departure from the traditional view within the Department that no hearing is required either under statute or the Constitution. The question remains open, with some support for the opposite view to be found in *Wong Yang Sung* v. *McGrath,* 339 U. S. 33 (1950) and in *U. S.* v. *Libby, McNeil & Libby,* 107 F. Supp. 697 (D. C. Alaska, 1952).* The Committee urges that in the drafting of the Code of Administrative Procedure (a responsibility delegated to the Administrative Law Section by the Special Committee on Legal Services and Procedure) no action be taken which would negate what value there may be in these precedents as applied to Interior Department matters or which would discourage the salutary step forward represented by the hearing provisions of the new rules.

One further item for consideration in connection with hearings is H. R. 2582 (similar bills are S. 531 and H. R. 3816 of the 84th Congress, 1st Session). This bill would require public hearings prior to withdrawals of the public lands and limit temporary withdrawals to five years. Current practice, when a Government agency applies to the Bureau of Land Management for a withdrawal from entry of public lands, is to publish notice in the Federal Register. If substantial objection is received within the 30-day waiting period, it is customary to hold a hearing in the area affected although such a hearing is not required. Several members of the Committee considered the bill too broad in that it would require a hearing even if no objections had been lodged; also, that some acreage limitation should be included to obviate formal proceedings on such minor items as the withdrawal of a few acres for a CAA beacon, etc.

In the meantime, another bill, H. R. 10371 (and numerous companion bills) was introduced providing that withdrawals for defense purposes in excess of 5000 acres could only be effected by act of Congress. This measure has excited considerable Congressional interest by reason of the decision in *F. P. C.* v. *Oregon,* 349 U. S. 435 (1955), holding that the Government could license, over the objections of the State, a proposed power project to be located on a Federal reservation and to use nonnavigable waters. Acting on this decision, the Navy Department considered that waters could be used on Navy reservations throughout the West without compliance with state water laws. A major purpose of H. R. 10371 is to thwart disregard of state water laws by the military departments, which have vast western acreages under withdrawal and have applications pending for several million additional acres. The Committee considers that the policy problem raised in H. R. 10371 does not fall within

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*What might be considered a contrary result was reached in *State of Wyoming ex rel. Winne Wintermote* v. *McKay* (Civil No. 2431-55, U. S. D. C., D. C. 1955). No opinion was handed down in the case. Complainant had filed application with Interior for classification of a parcel of land as suitable for a desert land entry accompanied by the required affidavits as to availability of water, irrigability, land non-mineral in character, etc. An inspection report found the land isolated, at an elevation of 7500 feet with short growing season, of questionable quality by reason of alkali, and that extensive canals and a pump lift would be necessary, even if the needed water rights were held, which was questionable. This report was held to rebut the affidavits and the application denied. The Secretary upheld the ruling on appeal (the report having been made available to the applicant) on the ground that subsequent argument did not overcome the report. In court the complainant alleged that secret hearings had been held, witnesses unknown to complainant had been heard, etc., and demanded a hearing to confront the witnesses and rebut them. The Government moved to dismiss. The Court (Tamm, J.) granted the motion, without opinion, finding that the actions of the Secretary in refusing to classify the land as suitable for entry under the Desert Land Act and in refusing to accord the plaintiff a hearing for the purpose of taking evidence were in all respects lawful and proper.

the Committee's jurisdiction. Since the problems mooted by this bill, rather than those of H. R. 2582, have been the more immediate subject of House Interior and Insular Affairs Committee hearings, the Committee is reserving H. R. 2582 for further consideration.

B. Rulemaking

The Committee has taken the position, endorsed by the Administrative Law Section,

> "That the Department of Interior should adopt the rule making provisions of Sec. 4 of the Administrative Procedure Act in all of the functions of that Department (exclusive of those pertaining to agency management or personnel), when it is a matter of general public interest."

In his address before the Section meeting on August 23, 1955, Under Secretary Davis stated:

> "Interior's major functions lie in the proprietary field, in the control of property, public lands, parks, Indian property and affairs, so that most of its actions are exempt under Section 4 of the Administrative Procedure Act from the necessity of the formalities ordinarily required in rule making. The pattern has been set for many years in the Department of taking full advantage of the benefit of that exemption.
>
> "I think the Department has taken advantage of its privileges when it would have better served the public by compliance with the normal procedures. Like many of these questions, however, it has two sides.
>
> "To completely remove the exemption has a serious effect upon administration. In a Department which extends from the Aleutians and Alaska to Samoa and the Virgin Islands, with literally hundreds of local conditions to deal with which do not have any general significance and certainly no national significance, the burden of strict compliance, in my judgment, would tremendously increase personnel, increase expense and serve very little useful purpose.
>
> "On the other hand, certainly the exemption can be utilized too widely, and if someone can give us a definition that will eliminate the local and the temporary from the general and the permanent, we would be happy indeed to utilize that definition and extend our compliance with the Procedure Act. As it is, it is being followed voluntarily in those situations which the Department feels are of general interest. However, such a policy leaves the door open that we are exercising typical arbitrary, bureaucratic conduct, giving the public an opportunity to comment when we see fit, and denying it otherwise. That is a serious charge which I, myself, have made, but confronted with the realities of administration, I am not sure of the answer."

In its report last year the Committee reviewed the findings of the Hoover Commission and Task Force reports, and the provisions with respect to rulemaking of H. R. 6114, introduced to implement the Task Force findings. In brief, this bill would eliminate the "public property" or "proprietary" exemption now in the APA; require a 30 day waiting period before the effectiveness of proposed rules, except in unusual circumstances; permit emergency rules of 120 days duration upon justification in the interests of public health and welfare and a finding that observance of the rulemaking requirements would not be in the public interest; and allow petitions by interested persons for the issuance, amendment or repeal of a rule. The Committee considered then, and still considers, that such a framework should provide room in which Interior can carry on its varied functions. There are admittedly fringe areas where the value of adherence to formal requirements may appear doubtful or adherence at all seem impossible by reason of urgency. The definition which the Under Secretary seeks remains elusive.

In the meantime, voluntary adherence by the Interior Department to forms of rulemaking procedures has become almost routine in areas of broad interest where significant policy problems are involved. Examples are the revision of the

Taylor Grazing Act Code, amendments to the O. & C. logging road rules, changes in the oil and gas leasing regulations, regulations governing Continental Shelf leasing and the new rules governing appeals to the Bureau of Land Management.

H. R. 10837, introduced on April 26, 1956, would qualify the present exemption of "public property" from Section 4 of the APA by considering this term not to include, for the purposes of the APA, "lands and natural resources, including electric power, owned by the United States". This measure was stimulated by a change in power rates proposed by the Department from certain Federal facilities which, it was stated, should not have been promulgated without adherence to procedures giving the consumers opportunity to comment. Although the Committee concurs in the theory of the bill, the measure, being somewhat single in purpose, should be considered in the light of the greater task of restating the rulemaking provisions, and indeed all of the APA, in the proposed Code of Administrative Procedure, the initial draft of which is to be prepared by November of this year.

As of the present, the Committee adheres to its previous position, approved by the Section, that the broad exemption from rulemaking enjoyed by the Department should be removed in areas of general public interest and believes that the approach of H. R. 6114 is close, if not perfect, to the sort of regulation with which Interior might live.

C. Bureau of Mines

The Committee considered material relating to the administration by the Bureau of Mines of the Federal Code Mine Safety Act (66 Stat. 692; 30 U. S. C. A. Secs. 451-483) and particularly Title II of the Act which is designed to enforce safety standards that will prevent major disasters in coal mines.

It appears that the Bureau has promulgated many "Instructions" for the enforcement of Title II, most of which are unpublished. The "Instructions" are issued to some 250 inspectors and are in turn subject to interpretation by these inspectors, as well as by the officials of the District Offices out of which they work, leading to varying standards. The basic problem appears to be whether the laudable objections of the Act would be impeded by the publication of "Instructions" in the *Federal Register,* as a minimum, and indeed whether some sort of rulemaking procedure involving Government, labor and industry to promote better understanding and adherence to the purposes of Act might not be desirable. Involved are the need for known and uniformly applicable rules and regulations in regard to inspections; sampling and analysis; issuance of orders and reports by Inspectors and the Director of the Bureau of Mines; appeals to the Director including those for special investigations, and the conduct thereof; and other areas in which there is broad and undefined administrative discretion in the Inspectors and the Director. In addition, there is a problem of implementation of the decisions of the Federal Coal Mines Safety Board of Review (to which appeal can be had from decisions of the Director) to assure that the decisions of that Board are adhered to and uniformly applied throughout the industry.

On the basis of the material thus far considered the Committee believes that some changes in the present system are desirable and that in any event, further inquiry into the situation is definitely warranted. A group of the Committee will prepare a report for Committee consideration. It is also intended that discussions be held with the Director of the Bureau of Mines, with representatives of the United Mine Workers of America and the coal operators associations and any other interested groups so that all views may be had. The Committee's interest in this, as in all other matters before it, is restricted to the promotion of desirable administrative law practices.

D. Administrative Matters

Past Committee Reports have pointed out serious deficiencies in connection with the availability of records in appealing local land office decisions to the Director of the Bureau of Land Management. Under the new regulations "no decision on appeal or in a contest shall be based

upon any record, statement, file or similar document which is not open to inspection by the parties to the appeal or contest" (Sec. 221.99(d)). This provision should assist greatly in reducing the past practice of labeling file material as "Confidential" which in some instances had been carried to the extent that appellants could not determine the findings behind the rejection of an application by local land offices, and thus had no real basis on which to conduct an appeal.

It is noteworthy that the Department has made real strides in the indexing and publication of decisions and opinions. As pointed out in previous reports of this Committee, there had been a serious problem for practitioners in following Departmental precedents. For example, our 1954 report (6 Ad. Law Bulletin No. 4, p. 240) pointed out that at that time the last volume of published Departmental decisions was Volume 59, covering part of 1947, and that a Solicitor's Survey team had reported that even the Department's attorneys were unaware of various controlling opinions rendered. This situation has been greatly relieved through the promulgation of an index-digest, on a cumulative, quarterly basis of "all published and all the important unpublished decisions and opinions". In addition, reported decisions are now up to date with Volume 62 of the Decisions of the Department of the Interior (62 I. D.), covering selected decisions of the Department for 1955, now at the printer, and with preprints, usually on a monthly basis, of decisions appearing in 63 I. D., which will cover 1956. The preprints are available upon subscription from the Superintendent of Documents. Current decisions, whether selected for publication or not, can be noted from the index-digest. Unpublished decisions are available from the Solicitor's office in mimeographed form. A subscription service ($36.00 per annum) has been inaugurated so that those interested may receive automatically, shortly after release, decisions which will not otherwise be published.

Although the index-digests now available date back to January 1955, there remains a wealth of unreported decisions and opinions accumulated over the previous years. The only key to a part of this material is a card index in the Solicitor's office which has heretofore not been open to public examination. However, only recently the card index has been made available for public use. There is only one set of the cards and it must be used in the Office of the Solicitor. There is no plan at the present time to duplicate the card index or to make it otherwise available for wider use.

Conclusions and Recommendations

The Committee concludes and recommends:

1. That the new rules promulgated by the Interior Department, effective May 1, 1956, be observed in action prior to any further formal recommendations with respect to the liberalization of the hearing provisions. The Department is to be commended for the spirit and effort which went into the new rules.

2. That, with respect to rulemaking, the Section's endorsement of the resolution sponsored by the Committee urging adoption by the Interior Department of the provisions of Section 4 of the APA in all its functions, where the matter is of general public interest, should remain unchanged.

3. That, with respect to both hearings and rulemaking, the Committee should follow closely the drafting of the Code of Administrative Procedure to the end that the aims of the Committee in connection with Interior Department matters may be recognized and considered.

4. That further study be made of the administration of the Federal Coal Mine Safety Act and coordination be had with all interests involved prior to the consideration of formal recommendations.

5. That the significant advances in connection with the availability of decisions and opinions, through the Office of the Solicitor of the Department of the Interior be commended and that continued encouragement be given to the even greater availability of precedents prior to 1955.

Respectfully submitted,

For the Committee,

ROBERT L. MCCARTHY, *Chairman*
HUGH FULLERTON, *Vice Chairman*

COMMITTEE ON POSTAL MATTERS

During the 84th Congress, 2nd Session, Senator Kefauver (for himself and Senators Hennings, Langer, and Wiley) introduced a Bill (S. 2516) to authorize the Postmaster General to hold and detain for temporary periods the mail addressed to persons attempting to obtain remittances through the mails for any obscene, lewd, lascivious, indecent, filthy, or vile article, matter, thing or substance, in violation of the Act of August 16, 1950 (39 U. S. C. 259a).

Upon consideration of the bill by the Section at Philadelphia in August, 1955, a resolution of the Section with respect to S. 2516 was approved by the Board of Governors of the American Bar Association in October 1955. This resolution favored legislation, with certain limitations and restrictions, authorizing the impounding of such mail matter for not exceeding 20 days, with a provision that the impounding order may be vacated, modified or extended by order of the U. S. District Court of the jurisdiction of the addressee. See 8 Ad. L. Bul. 8-9.

Acting pursuant to the aforesaid resolution the Committee on Postal Matters drafted a bill which was introduced in the House as identical bills by Congressman Dowdy of Texas and Congressman Rees of Kansas as H. R. 9842 and 9848, respectively.

The Bills were favorably recommended with minor technical amendments by Honorable Abe McGregor Goff, Solicitor for the Post Office Department. The suggested amendments were incorporated in H. R. 9842 by the House Committee on Post Office and Civil Service. The bill has passed the House and is now on the Senate Calendar for passage with a minor amendment.

Procedures under the Act of August 16, 1950, with respect to obscene matter transmitted through the mails are subject to the Administrative Procedure Act. The Postmaster General contends that procedural delays under the Act of August 16, 1950, negative or greatly reduce the effectiveness of the law.

The subject bill allows an interim order to hold and detain mail matter for 20 days whenever the Postmaster General shall determine during proceedings before him that in the administration of the Act of August 16, 1950 (39 U. S. C. 259a), such action is necessary to the effective enforcement of the Act. Action of the Postmaster General in issuing the interim order shall not be subject to the requirements of the Administrative Procedure Act.

Notice of the interim order shall be sent by registered mail to such person at the post office at which such mail is to be held and detained, setting forth in specific detail the reasons therefor, and inclosing a copy of the Act authorizing the interim order, as well as a copy of the Act of August 16, 1950.

The holding and detention order shall expire at the end of 20 days unless prior to such expiration the Postmaster General shall obtain an order, from the United States District Court of the district in which is situated the post office where such mail is held or detained, to hold and detain such mail for a further period as the Court shall determine.

The bills further provide for notice by the Clerk of the Court as to the filing of the petition to the person whose mail is held and detained, who shall have five days in which to appear and show cause why the order should not issue.

If the Court shall determine the continued holding and detention of mail addressed to such person is reasonably necessary to the effective enforcement of the Act of August 16, 1950, the holding and detention shall be continued until the conclusion of the proceeding by the Postmaster General, or until further order of the Court; otherwise the detained mail shall be released forthwith for delivery. An appeal from the order of the Court shall be allowed as in civil causes.

Any order of the Postmaster General or of the district court may be dissolved by the Court at any time for cause, including failure to conduct expeditiously proceedings instituted against such person before the Postmaster General with respect to the Act of August 16, 1950.

Persons whose mail is detained and held by the postmaster shall have the right to examine said mail and receive such mail as clearly is not connected with the alleged unlawful activity.

The Senate Committee in reporting H. R. 9842 stated that—

> The committee recognizes that even in its present form the bill gives the Postmaster General extraordinary and summary powers to impose a substantial penalty by impounding a persons's mail for up to 20 days in advance of any hearing or any review by the courts. Such power is directly contrary to the letter and spirit of normal due process, as exemplified by the Administrative Procedure Act, which requires a hearing before any penalty may be imposed. The Post Office Department has made its case for this legislation on the grounds that a temporary and summary procedure is required to deal with fly-by-night operators using the mails to defraud or to peddle pornography, who may go out of business—or change the name of their business or their business address—before normal legal procedures can be brought into operation. The Post Office Department has not recommended, nor does this committee approve, the use of the temporary impounding procedure under this bill as a substitute for the normal practice of an advance hearing or the bringing of an indictment for violation of the criminal code in all cases involving legitimate and well-established business operations.

It is expected that the House Committee on Post Office and Civil Service, as a result of extensive hearings pursuant to H. Res. 304 with respect to the mailability of articles and printed matter generally, may report a bill authorizing the impounding for temporary periods of mail addressed to persons who mail unsolicited articles with request for payments or contributions, or who conduct through the mails any lottery or any scheme for obtaining money or property through the mails by means of false or fraudulent pretenses, representations or promises, in violation of Sections 255, 259 or 732 of Title 39 U. S. Code.

There are a number of other legislative proposals affecting the Postal Service pending before the Committees of Congress which may involve questions of procedure under the Administrative Procedure Act. Among these proposals is H. R. 7768, a Bill to revise, codify and enact into law, Title 39 of the U. S. Code, entitled "The Postal Service." These proposals are being studied by the Committee on Postal Matters for possible action and recommendation (within the authority of the Committee) to the Administrative Law Section.

For the entire Committee,

Wm. I. Denning, *Chairman*
Abe McGregor Goff, *Vice-Chairman*
Edward de Grazia, *Vice-Chairman*

PUBLIC CONTRACTS COMMITTEE

The Committee organized and began its functions soon after the appointment of the Chairman in the early Fall of 1955.

The Committee is composed of lawyers in private practice, active in the field of Government Contracts, and of a number of lawyers from the Government side, including a member from each of two of the Government Contract Appeals Boards.

Regular meetings have been held, not less often than once a month and these have been well attended by both private and Government lawyers.

Inasmuch as there were a number of active projects demanding the Committee's attention it was found necessary to distribute the assignments to various Subcommittees. Private as well as Government lawyers were assigned to these Subcommittees. It was found impractical in some cases to ask Government attorneys to accept the Chairmanship of Subcommittees because the project under consideration conflicted with the Government lawyers' official employment. Although re-

lieved of such Chairmanship assignments the Government lawyers nevertheless participated actively in the work of the particular Subcommittee and contributed substantially to the work of the Committee as a whole.

Among the projects undertaken by the Public Contracts Committee is the Panel Discussion Demonstrating the Trial of a Government-Contract Case before an Appeals Board, which was put on by the Committee at the Philadelphia Meeting in August, 1955, and repeated before the Regional Meetings at St. Paul, Minnesota, New Orleans, Louisiana, and Hartford, Connecticut. This Panel will be reported on separately by the Chairman of the Panel Committee Mr. Robert Moss.

On February 24, 1956, the Public Contracts Committee entertained at a luncheon and afternoon discussion the Chairmen of the Army, Navy, and Air Force Panels of the Armed Services Board of Contract Appeals, and the Chief Trial Counsel of many of the Government agencies interested in contract-appeal procedure. This luncheon and meeting was attended by the Chairman of the Section, Mr. Rufus Poole. Various problems of appeal procedure were discussed. The Committee felt that much was accomplished in the direction of better understanding between private counsel representing appellants and the Armed Services Board of Contract Appeals. Subsequent to this meeting several letters were received by the Committee complimenting it on the meeting.

Optional Appeals. At the Philadelphia meeting in August, 1955, the Section considered a proposal by the Public Contracts Committee for legislation making administrative appeals in Government-Contract cases optional with the contractor, but this proposal was voted down by the Section and referred back to the Public Contracts Committee for further study. Since that time the Public Contracts Committee has given further study to the matter in order to overcome some of the administrative deficiencies which led up to the proposal for optional appeals legislation. These deficiencies included, among other things, multiplicity of appeals, particularly in cases involving the United States Corps of Engineers; the lack of jurisdiction of Appeals Boards when the claim involved was for unliquidated damages for breach of contract or for reformation of the Contract, or, indeed, of any case where the question involved was one of law only. It was suggested during Committee debates during the year that something might be accomplished in lieu of legislation by a suggestion to the various Appeals Boards that they devise some procedure for determining at the outset of the case, before the appellant is subjected to the delay and expense of a hearing, whether they have jurisdiction to grant relief. Absent such jurisdiction, the appeal could be dismissed and the appellant would then be free to pursue his remedy in Court. A letter which the Public Contracts Committee recommends be dispatched to the Heads of the various Contracting Agencies involved, bearing upon this point, is now awaiting the approval of the Section. Yet to be solved is the problem incident to multiple appeals, which the Committee feels imposes a heavy burden of expense and delay upon Contractors doing business with the Government. Whether this problem can be solved by representations to the Contracting Agencies, or must become a matter for legislative relief, will be disclosed in the future. It is a subject for continued study by the Committee.

Subpoena Powers. The House of Delegates, at the mid-winter meeting in Chicago in February, 1956, adopted a Resolution that the American Bar Association support legislation which would give subpoena powers to the various Boards of Contract Appeals, empowering them to subpoena witnesses to testify under oath, a power which they have not had heretofore. The preparation of appropriate legislation is now before the Public Contracts Committee and it is expected that a proposed draft thereof will be prepared and available before the Dallas meeting.

Availability of Appeals Boards Decisions. For some time the Public Contracts Committee has been attempting to arrange with the Corps of Engineers Claims and Appeals Board and the

Armed Services Board of Contract Appeals, from whom the bulk of administrative decisions on Government-Contract cases come, to make copies of their decisions available for distribution to attorneys interested. No success has been achieved with the Corps of Engineers Claims and Appeals Board. Efforts have been made to induce this Board to send a few copies of their Decisions to the Library of the Bar Association of the District of Columbia but this effort failed. As far as this Committee knows, copies of the Engineers Board's Decisions are not made available to any Bar Library. The Armed Services Board of Contract Appeals, however, made available to the Committee copies of all past Decisions which they had available. These were placed in the office of the Secretary of the Public Contracts Committee and an announcement was made in the District of Columbia Bar Journal offering them for use of all attorneys interested. Attorneys are using this service. At the same time, the Secretary of this Committee is attempting to keep this service up to date with copies of current Decisions of the Armed Services Board. In addition to the foregoing, the Armed Services Board of Contract Appeals agreed to make their current Decisions available for publication so that they could be distributed to interested lawyers on a subscription basis. Pursuant to this arrangement, a member of the Public Contracts Committee, Mr. Robert Moss, undertook the task of securing the stencils from the Armed Services Board for reproducing and distributing the copies of the Decisions. After the distribution of one month's Decisions, however, Mr. Moss was advised by the Board that the stencils could no longer be made available and this work had to be discontinued. However, the Committee is informed that the Armed Services Board is negotiating with the Government Printing Office for the printing and distribution of its Decisions for a charge to be established by the Government Printing Office. The Armed Services Board suggested that a letter from this Committee to the Publications Division, Navy Department, indicating that the Committee would assist in securing subscribers thereto, would be helpful in launching this project. The Committee has sent such a letter. The Committee feels strongly that lawyers in private practice in the Government-Contract field are hampered greatly by the fact that the Decisions of the two principal Boards are not distributed. Individual copies of Decisions can be secured on request of the Boards, provided the attorney learns that the Board has rendered a Decision in which he is interested.

Delay in Site Delivery. A line of Supreme Court cases upon which the Government Contract Appeals Boards frequently rely, holds that the Government is not responsible for breach of contract for delays in delivering the site for the work, in the absence of an express contract provision for damages for such delay. Serious losses have resulted to many contractors on this account. A Subcommittee of the Public Contracts Committee was appointed to study this matter. In its report to the full Committee, rendered in April of this year, this Subcommittee pointed out that there is in the form of contract used by some of the contracting agencies a "Suspension of Work" Clause broad enough to cover delays in site delivery. This clause is used by the United States Corps of Engineers and the Atomic Energy Commission. The Subcommittee learned during its investigation that two other Government Agencies, namely, the Navy Department and the Bureau of Reclamation of the Department of the Interior, are considering a similar clause. It was felt by the Subcommittee that it should continue its study of this subject until the proposed suspension-of-work clauses of the Navy and the Bureau of Reclamation are made public, and if the language thereof is unsatisfactory the Public Contracts Committee can then consider whether it will recommend to the Section that authority be granted to this Committee to make general representations to all contracting agencies for a standard "Suspension-of-Work" clause; or whether the matter is something that might better be handled through legislative channels. The Subcommittee is keeping in touch with the situation and will report to the Public Contracts Committee from time to time as developments occur.

Renegotiation. At the mid-winter meeting at Chicago on February 20, 1956, the House of Delegates adopted a Resolution to the effect that the American Bar Association recommends to the Congress the enactment of legislation (a) recognizing the adversary character of proceedings before the Renegotiation Board and (b) providing a greater degree of procedural due process for contractors who are parties thereto; and authorizing the Section of Administrative Law to represent the Association in this endeavor.

Subsequently this Committee presented to the Chairman of the Administrative Law Section a draft of Proposed Amendments to the Renegotiation Act, together with a brief explaining the Association's position. These documents were forwarded by the Chairman of the Section to Mr. T. Colin F. Stam, Chief of Staff, Joint Committee on Internal Revenue Taxation, with a request that a meeting be arranged between Staff Members and Representatives of the Public Contracts Committee to discuss the proposed amendments. No such meeting was called and recently the Report of the Joint Committee on Internal Revenue Taxation was published making no reference to the proposed procedural changes.

The Defense Department has recommended the extension of the Renegotiation Act for two years beyond its present expiration date, December 31, 1956. If the Act is extended, without the provisions requested by the American Bar Association, then the Public Contracts Committee will be faced with the alternative of attempting to achieve its objectives of (a) recognition of the adversary character of the proceedings and (b) providing a greater degree of procedural due process, through representations to the Renegotiation Board that Rules should be adopted which would accomplish these purposes.

Uncompleted projects before the Committee are:

(a) The so-called "Optional Appeals" project, the objectives of which have been explained above and which the Committee visualizes as a long-range project;

(b) Legislation granting Boards of Contract Appeals subpoena powers;

(c) The problem of procuring publication of Appeals Boards Decisions:

(d) The study of the problem involving delay in site deliveries; and

(e) The pending Amendment of the Renegotiation Act and possible representations later on concerning the rules of the Renegotiation Board.

For the whole committee,

Bernard J. Gallagher, *Chairman*
Gilbert A. Cuneo, *Vice Chairman*

COMMITTEE ON TREASURY DEPARTMENT MATTERS

Since the appointment of the above committee, no meetings have been held. However, the committee has been established and liaison has been established with the Section of Customs Law of the American Bar Association and the Section on Taxation of the American Bar Association. This has been done in order to avoid overlapping.

This committee should be continued and make a thorough study of the Treasury procedures.

For the Committee,

Isadore G. Alk, *Chairman*
J. Bradley Colburn, *Vice-Chairman*

COMMITTEE ON STATE ADMINISTRATIVE LAW

RECOMMENDATION: The committee on state administrative law recommends that proposals for legislative review of administrative rules, as described in the following report, offer potentialities for improvement of administrative procedure that deserve careful study by state bar associations and other state groups interested in the problem of improving the rule-making activities of state agencies.

Proposals for legislative review of agency rules are of particular interest in connection with state agencies. While the Federal Administrative Procedure Act requires the Federal agencies (subject to the exceptions stated in Sec. 4 of the Act) to give advance notice of rule-making activities and afford interested persons an opportunity to participate therein, many state agencies (including, typically, workmen's compensation commissions, unemployment compensation commissions, corporation and security commissions, and public utility commissions) operate without the restraining influence of any comparable statutory limitations.

Such state agencies often promulgate rules without advance notice or hearing. Not infrequently, those subject to the rules might wish to question their wisdom and legality; but in many states no convenient procedural devices are readily available to test the validity of the rules.

Under these circumstances, the prospect of statutory provision for legislative review of administrative rules offers two potential advantages: first, it affords a speedy and direct method for challenging the validity of administrative rules; second, it permits review on broader grounds than are ordinarily available in the courts. When judicial review is available, the court is ordinarily limited to rather narrow issues grounded on questions as to agency power; but when the legislature reviews the rule, it may be set aside if the legislature concludes that the challenged rule is not wise or expedient under the circumstances.

The principle of laying administrative regulations before the legislature has been far more popular in England than in this Country. The antecedents of the English practice (now crystallized in the Statutory Instruments Act of 1946, 9 & 10 Geo. VI, c. 36; 39 Hallis. Stat. 783) are traced back to 1833 in a comprehensive review by Sir Cecil Carr, "Parliamentary Supervision in Britain," 30 N. Y. Univ. L. Rev. 1045 (1955).[1]

As explained by Sir Carr, legislative control over delegated legislative powers is asserted in England by the insertion, in statutes granting rule-making powers, of provisions requiring that the rules so made shall be laid before Parliament, and providing either (a) that the rule may be voided if within 40 days a resolution is passed by either House annulling the rule, or (b) that the rule shall not be operative until approved by resolution. To assist Parliament in its consideration of the rules so laid before it, there has been created a "Select Committee on Statutory Instruments," popularly and descriptively referred to as the Scrutiny Committee, which examines all rules laid before Parliament to determine whether the special attention of the Members should be directed thereto on any of several grounds which might prompt disapproval.

Among the grounds so specified, the following suggest the advantages that may be obtained by such legislative review: (1) that the regulation is not open to challenge in the courts; (2) that it appears to make unusual or unexpected use of the powers conferred; (3) that it purports to have unauthorized retrospective effect.

Probably every attorney engaged in practice before state administrative agencies can think of instances when he would have welcomed an opportunity to submit an administrative rule to the legislature, for re-examination on such broad grounds of policy. The writer of this report could

[1] The practical effectiveness of the English procedure was highlighted in a provocative article by J. A. G. Griffith, "Delegated Legislation—Some Recent Developments," 12 Modern Law Rev. 297 (1949); and has more recently been summarized by Bernard Schwartz in a comment on Sir Carr's article, entitled "Legislative Control of Administrative Rules and Regulations: The American Experience," 30 N. Y. Univ. L. Rev. 1031 (1955).

describe instances in his own state (Michigan) where provisions for legislative review of administrative rules have been effectively utilized to obtain relief that would probably not have been obtainable in court.

The Michigan statute (Comp. Laws, 1948, Sec. 24.78 (b)), enacted in 1947, is fairly illustrative of the half-dozen State statutes which provide for such legislative review; and a brief description of its provisions illustrates the general pattern of such legislation. After requiring that each agency rule must, at the time of its adoption, be approved by the state attorney general as to both form and legality; and after making detailed provisions for the periodical publication of all agency rules by the secretary of state; the statute provides for legislative review of all agency rules in the following method: copies of each new rule must be filed with the House of Representatives and the Senate (and also with each member of the Legislature) before the first day of the regular legislative session next following the adoption of the rule. Each rule is referred to appropriate committees of the House and Senate, in the same manner as bills are referred to the committees. Upon proper request, committee hearings may be held as to any such rule. If, by concurrent resolution, the Legislature disapproves any rule so considered, the rule is thereby abrogated; and agencies are forbidden from re-promulgating such rules without first obtaining specific legislative approval thereof. The statute also creates a joint legislative committee on administrative rules, with power to consider challenged rules between legislative sessions, and to suspend the operation of any rule found to be not in conformity with the statute under which it was promulgated.

A comprehensive review of the six State statutes providing for legislative review of administrative rules,[2] written by David L. Howe, has recently been published by the Legislative Research Center of the University of Michigan Law School. The author summarizes their points of similarity as follows:

> "In each state, the legislature is authorized to review all rules in effect at the time the review takes place. In four states the statute gives the legislature only a negative power, the right to nullify rules by resolution of disapproval. This is, in effect, a legislative veto power over administrative rules. Two of these provide that the resolution can indicate what modifications would result in a permissible rule. The other two states give their legislatures somewhat broader power, allowing the legislature to approve, alter, amend, or modify the rules in addition to the power to abrogate them."

The chief points of variance between the statutes, as Mr. Howe points out, involve (1) whether all rules must be referred to the legislature, or whether the procedure is available at the discretion of the legislature; (2) whether review is by the legislature as a whole, or by a special legislative committee. The Michigan statute is unique in providing a special interim committee with power to act between sessions.

Attorney General opinions in Wisconsin (43 O.A.G. 350, 1950) and Michigan (letter opinion of December 17, 1953) have challenged the constitutionality of such provisions; but several writers, including Professor Schwartz and Mr. Howe, have raised strong doubts as to whether the grounds of objection urged by the attorney generals would be sustained in court. It is believed that the existence of these two opinions should not deter further exploration of the feasibility of the device.

Because most members of the committee have had no experience with statutes providing such legislative review of administrative rules, the committee makes no affirmative recommendation for their adoption. It does, however, recommend that the potentialities of this procedure, as a means of challenging otherwise unreviewable abuses of discretionary rule-making powers, are such as to

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[2] Conn.—Gen. Stat., Sec. 285 (1949); Kansas—Gen. Stat. 77-410 (1949); Mich. Comp. Laws Sec. 24.78 (b) (1948); Neb.—Rev. Stat. Ann. Sec. 84-904 (1950); Va.—Code Ann. Sec. 9-6.9 (d) (1954); Wis.—Stat. Sec. 227.031 (1953).

justify and invite examination of the subjects by interested groups in the several States.

FRANK E. COOPER, *Chairman*

HORACE L. WELLER,
Vice-Chairman, 1st Circuit

ORRIN G. JUDD,
Vice-Chairman, 2nd Circuit

HON. NATHAN L. JACOBS,
Vice-Chairman, 3rd Circuit

G. KENNETH REIBLICH,
Vice-Chairman, 4th Circuit

DAVID M. FIELD,
Vice-Chairman, 5th Circuit

BENJAMIN GOODMAN, JR.,
Vice-Chairman, 6th Circuit

HORACE RUSSELL,
Vice-Chairman, 7th Circuit

JOHN CARLISLE PRYOR,
Vice-Chairman, 8th Circuit

CHARLES H. WOODS,
Vice-Chairman, 9th Circuit

MAURICE H. MERRILL,
Vice-Chairman, 10th Circuit

ROBERT F. KNEIPP,
Vice-Chairman, D. C. Circuit

COMMITTEE ON STATE ADMINISTRATIVE LAW RECOMMENDATION ON THE PROPOSED ADMINISTRATIVE PROCEDURE ACT FOR THE DISTRICT OF COLUMBIA

The Committee on State Administrative Law recommends the adoption by the Section of the following resolution:

"RESOLVED, That the Section of Administrative Law recommends that the House of Delegates adopt the following resolution:

'RESOLVED, That it is the opinion of the American Bar Association that the Congress should enact an administrative procedure act for the government of the District of Columbia substantially similar to H. R. 11625 of the 84th Congress, and that the Section of Administrative Law be authorized and directed to advance appropriate legislation to that end.' "

Reasons for the Recommendation

There has been introduced in the 84th Congress H. R. 11625, a bill "To prescribe administrative procedure for the government of the District of Columbia, to require the maintenance of an official publication for said government, and for other purposes." This bill, drafted by a joint committee comprised of the Committee on Municipal Regulations of the Bar Association of the District of Columbia and the Committee on Administrative Agencies of the District of Columbia of the Administrative Law Section of such Association, was patterned after the Federal Administrative Procedure Act and the Model State Administrative Procedure Act drafted by the National Conference of Commissioners on Uniform State Laws, but with modifications suggested by members of the joint committee and Ashley Sellers, Esq., Chairman of the Special Committee on Legal Services and Procedure of the American Bar Association.

The Committee believes the enactment of an administrative procedure act for the District of Columbia to be in the interest of the citizens of said District, it approves H. R. 11625 of the 84th Congress, and accordingly it recommends that the Section adopt the proposed resolution set forth in this report.

Respectfully submitted,

On Behalf of the whole Committee,

ROBERT F. KNEIPP,
Vice-Chairman, D. C. Circuit

COMMITTEE ON ADMINISTRATIVE PRACTITIONERS

Statutory and Administrative Restrictions on Practitioners' Fees

"The future of the advocate, as the topmost in hierarchy of French lawyers, would seem to depend on the degree of protection afforded him by legislation and the prospects of survival are not very encouraging." Simmons, "French Lawyers' Special Fields," 30 Tulane L. Rev. 101 (1955).[1]

Introduction

This report was prepared in response to a request of the Board of Governors, at its October, 1955, meeting, that the Administrative Law Section study statutory and administrative limitations on attorneys' fees. The Section has been concerned with this subject for some time. See *5 Ad. L. Bul.,* No. 3 (1953), at pp. 88-90; *6 Ad. L. Bul.,* No. 4 (1954), at p. 165. At its annual meeting in Chicago in 1954, the Section adopted a resolution recommending that the House of Delegates adopt a resolution authorizing the Section of Administrative Law to advance appropriate legislation including repeal of statutory provisions placing arbitrary or unreasonable limitations on fees for legal services to be rendered before administrative agencies. The resolution was premised on the belief that such limitations effectively restrict the right to representation by counsel.

The Section decided, however, to postpone presentation of the resolution to the House of Delegates, pending determination of the jurisdiction of the Association's Committee on Professional Relations, and until consideration could be given to the problem of whether legislative restrictions of fees should not be handled as a part of an Administrative Practitioners Act. The Section authorized its Council to report the subject matter of the resolution to the House at such time as it deemed appropriate.

The Problem

The top-ranking lawyers in the United States are not faced with extinction like some of their British and French counterparts.[2] However, our profession is one of the most competitive in our country, and many lawyers soon remove their shingle and abandon practice for more lucrative fields.

The lawyers who survive professionally usually depend solely on the practice of law for livelihood. Hence, if unreasonable limitations are imposed on fees, good attorneys may refuse to take cases in which the compensation is seriously restricted. The right to representation, by competent counsel, is as essential an ingredient to a fair and adequate administrative hearing as in a judicial trial.[3]

This right may be threatened or lost by rules restricting legal fees. For example, many competent young lawyers are deterred from entering the specialty of workmen's compensation on the side of the employees because of the inadequacy of fees, despite the need for legal services.[4] Moreover, able attorneys usually represent the insurance companies and the state insurance funds. Some agencies, such as the Veterans Administration, which have imposed a low fee scale for private practitioners, retain Government lawyers at a much higher scale of pay. Moreover, in contrast to some instances in which private counsel exceed the number of government counsel, a claimant for a benefit may find many federal lawyers arrayed against him.

The frequent argument that the Government may dispense its privileges at its uncontrolled discretion leads too easily to a denial of constitutional protections.[5] Abuse of administrative discretion may occur in all branches of government action, including decisions relative to pensions, old age annuities and survivorship laws and regulations.[6] Moreover, it is impossible to draw with precision the line between privileges and matters of right.

Accordingly, from economic as well as public considerations, some attorneys have expressed alarm at the increasing tendency of legislatures

and administrative agencies to regulate and limit fees. Some of the restrictions leave it to the administrative agency or to a court to fix a reasonable fee, *e.g.* most workmen's compensation laws; often a maximum limit is placed on the amount of the fee. Although ten per cent of the claim or recovery is a popular limitation, sometimes, as in the Philippine Rehabilitation Act of 1946, the limit is lower.[7] Sometimes the percentage is decreased as the amount involved increases. Sometimes a maximum fee is fixed, regardless of the amount. Most bar association schedules of fees, to the contrary, fix minimum fees.

The trend in administrative law is especially important because of the gravitation of law practice toward matters of administrative law.[8] Some of the regulations may be profound in their effects and implications, for a counsel's knowledge and training in the law is as essential to an adversary proceeding before an administrative tribunal as before a court. In both types of tribunals, counsel are the key to developing the facts of the controversy, formulating the issues, briefing technical and legal matters and expediting the proceeding. The lack of counsel in administrative proceedings may irretrievably damage a subsequent law suit or even result in the loss of the suit. For instance, a taxpayer may, through inadequate knowledge, take a position before the higher echelons of the Internal Revenue Service which is inconsistent with the facts of his case. By his actions, he may make it difficult or impossible even for expert counsel, in a suit in the federal district court or the court of claims to recover taxes paid, to overcome the adverse effects of the client's earlier action.[9] Similarly valid contract claims against the government are often lost by lack of counsel.[10]

Like the requirements for special admission for lawyers to practice before administrative agencies, or the general and indiscriminate admission of laymen to the conduct of adversary proceedings, the limitation of attorneys' fees may be a manifestation of the hostility of certain legislators or administrators toward attorneys, or indeed the whole legal profession.[11] Even if Government lawyers rather than laymen fix the fee or fee scale, they are often without experience in private practice and prone to undervalue the private lawyer's expenses and the value of his services. In some cases the limitation is based on a desire to reduce the cost of legal services and to enable the claimant to receive a larger share of the award.

Such regulations may constitute a serious encroachment both upon the client's freedom to choose counsel of his own selection and upon the lawyer's freedom to represent any cause of client he sees fit. The public and the Government are bound to suffer by such regulation—at least in most situations.

Scope of Report

An adequate investigation of this report involves not only a compilation of statutes and regulations, but also a study and evaluation of actual practice. On December 30, 1955, the General Counsel of Federal executive departments and independent establishments were sent a questionnaire asking whether there were any statutory provisions, agency regulations, or practices relating to the fees of practitioners before their agencies; what, if any, standards were employed and how such standards had been applied; whether provision was made for disciplinary action in relation either to the amount of fees or agreements governing fees and how such provisions had been employed, and related questions. They were also asked whether the agency had found the regulation desirable or undesirable and whether the limitations had, in their opinion, affected the extent, competency and experience of practitioners before the agency.

The replies indicated that comparatively few Federal agencies regulate attorneys' fees, but that their number is increasing. In two modern areas of state welfare laws—workmen's compensation and unemployment insurance—the fixing of fees by administrative agencies are very frequent. No person answering the questionnaire criticized any reported restriction. None of the six Federal agencies which apply the canons of legal ethics

to all practitioners before them reported this fact as a standard for the regulation of fees.

Neither this committee nor those who answered the questionnaire have any data bearing upon the actual impact of restrictions in fees upon the calibre of representation. It should be noted that most of the restrictions proscribe the amount that the representative may obtain directly from the plaintiff or petitioner and do not prohibit another person or party from employing counsel to represent such claimants, if without charge to the claimant. Retainers may thus both circumvent the statutory restriction and afford the type of representation which might be denied were the restriction controlling. Again, there is no data bearing on the incidence of such practices nor upon its significance.

The various restrictions and relevant comments by Federal agencies will be discussed *seriatim*.

Analysis of Federal and State Limitations on Legal Practitioners' Fees

Tort Law

A few recent examples of limitations of attorneys' fees will demonstrate the seriousness of this problem. The first illustrations will be drawn from tort law, a field which constitutes by far the major source of civil litigation—tort law.

In 1946 after a long series of bills, one of which was vetoed, the Congress in its Legislative Reorganization Act enacted the Federal Tort Claims Act.[12] This law, with certain important exceptions, permits anyone injured in person or property by a Federal employee in the course of his employment to recover up to $1,000 by administrative determination and up to any amount by suit in the Federal District Court. A provision of the Federal Tort Claims Act permits the court or Federal agency to allow a reasonable attorneys' fee not exceeding 10 per cent of the amount recovered, if the recovery is $500 or more, or 20 per cent of the amount recovered in court, to be paid out of the award or judgment, to the claimant's attorneys. Although apparently most administrative agencies do not exercise this authority, the courts frequently do.[13] Violations of the section are punishable by a maximum fine of $2,000 or imprisonment for a year, or both. Provision for criminal sanctions of fine and imprisonment are frequent in restriction of fees laws.

The excellent report of a Special Committee to Investigate Statutory Limitations of Attorneys' Fees presented at the Seventy-Third Annual meeting of the New York State Bar Association (January 1950) traced the origin of the limitations established in the Federal Tort Claims Act. The report concludes that the restriction grew from the prior customary practice of the Congress in imposing in private laws a limitation on attorneys' fees to an amount not in excess of 10 per cent of the amount awarded to the claimant.

Another illustration of this trend is a proposed rule of the Appellate Division of the Supreme Court of New York (Manhattan) to impose a 35 per cent limitation on contingent fees in negligence cases. In April, 1955, the New York County Lawyers Association polled its members on the proposed rule. Of some 3,140 responses 14 per cent favored the rule; 25 per cent favored the rule which a Committee of the New York Association recommended (a 35 per cent limitation with a certain modification for the protection of lawyers over the proposed rule), 23 per cent approved a 40 per cent limitation, and the remaining 37 per cent opposed any regulation.[14]

Department of the Interior Indian Tribal Attorneys

Another illustration of the limitation of attorneys' fees is drawn from the specialized field of Indian law. In 1854 the Commissioner of Indian Affairs proposed that "contracts between Indian tribes and claims agents, attorneys, or other persons should be declared null and void . . ."[15] This administrative manifestation of hostility to attorneys was implemented by a drastic law enacted originally in 1872, when few Indians were citizens. The 1872 act[16] which amended the act of March 3, 1871[17] required the approval of the Secretary of the Interior and the Commissioner of Indian Affairs to all the provisions of contracts between attorneys and tribes and be-

tween attorneys and noncitizen Indians. The Indian Reorganization Act of 1934[18] lessened the restrictions for most tribes. It provided merely for the approval of the choice of counsel and fees for the tribes who adopted constitutions under the provisions of the act. In 1951 and 1952 the then Commissioner, Dillon S. Myer, sought to control, by detailed administrative regulations the choice of counsel, terms and performance of such attorney contracts. A few examples will indicate the extent of the proposed interference. Every contract for a general attorney must provide for termination on 30 days' notice by the Commissioner, *without the consent of the client, the tribe.* No contract could exceed three years. If the attorney chosen by the tribe has too much business from Indians, his contract could be turned down. Indian tribes were discouraged from retaining lawyers from outside of their local area, and tribal lawyers were required to submit detailed reports to the Commissioner on the performance of their duties.

A growing flood of protests against the proposed regulations by representatives of Indian tribes and organizations interested in their welfare resulted in the withdrawal of the proposed regulations. A special committee of this section headed by the present chairman of the section appeared at public hearings and filed a brief in opposition to the proposal. Here was a limitation not only upon fees but also upon the relations between lawyers and their tribal clients. In the guise of protecting a disadvantaged people, a Commissioner attempted to repress the lawyers who might attempt to check arbitrary administrative action. Accordingly, the then Secretary of the Interior disapproved the proposed regulations.

The statutes previously referred to are broad enough to authorize the Interior Department to fix the amount of attorney fees in claims contracts providing for the representation of Indians before the Indian Claims Commission, see in 25 U. S. C. 70(n). Generally the exact amount of the fee is not stipulated in the contracts. However, it is the practice to approve contracts providing that the fee be fixed by the Indian Claims Commission in an amount not exceeding 10 per cent of any recovery.

Attorneys for Individual Indians

The Interior Department also has authority to regulate fees of attorneys of individual Indians with respect to contracts involving tribal funds or property in the hands of the United States.[19] Regulations have been adopted governing attorneys' fees for services in the determination of heirs and the approval of wills;[20] also prescribing a schedule of fees for executors, administrators, guardians and attorneys for Osage Indians.[21]

The supervision exercised by the Bureau of Indian Affairs with respect to choice of counsel and amount of counsel fees is part of its supervisory authority over Indian tribes and Indians, with respect to trust or restricted property. With respect to ordinary real or personal property or other matters, an individual Indian has the same right as anyone else to be represented by counsel of his own selection, who may not be subordinated to counsel appointed by the court.[22] However, fees on behalf of Indian parties in contests under public-land laws shall be one-half of the fees provided by law in such cases, and such fees must be approved by the Secretary of the Interior.[23]

Department of Justice—Board of Immigration Appeals and Immigration and Naturalization Service

The Attorney General issued in 1944 regulations which are still in effect which provide for disciplinary action against a practitioner, legal or lay, who charges grossly excessive fees in relation to the service performed by him in cases before the Board of Immigration Appeals and the Immigration and Naturalization Service.[24] At one time there was a limitation of $25 as a fee to represent a person in a naturalization proceeding, but that limitation has been removed.

Department of Labor—Bureau of Employees Compensation

The Federal Employees Compensation Act of September 7, 1916[25] is administered by the Bu-

reau of Employees Compensation, Department of Labor. This statute is of great importance to the Federal Government and to its over two million officers and employees. Section 23(b) of the law requires the approval of the Administrator of the Federal Security Agency (now the Secretary of Labor), to approve any claim for legal services, Section 1.24(c) of the regulations governing the administration of the statute requires an itemized statement of the necessary work done on behalf of the claimant and states that the fee shall be "reasonably commensurate with the actual necessary work performed", taking into account the capacity in which the representative has served and the circumstances of the claimant. Section 124(d) provides that the Bureau will not recognize any contract for the payment of an agreed sum, or any contingent contract, with respect to legal or other services rendered.

Treasury Department

A statute authorizes the Secretary of the Treasury to prescribe rules governing the recognition of agents, attorneys, or other persons representing claimants before his department.[26] Based on this authority the Secretary has issued more extensive rules regarding the enrollment and practice of persons before the Treasury than any other Department of the Federal Government [27]. Section 10.2(y)(1) of these regulations deals with fee agreements as follows:

> "No enrolled person shall exact from his client a manifestly unreasonable fee, whether contingent or otherwise, in any manner before the Treasury Department. The reasonableness of a fee in any case is within limits a matter of judgment and depends upon all the facts and circumstances thereof, including the complexity and difficulty of the case, the amount of time and labor required for its proper preparation and presentation, the amount involved, and the professional standing and experience of the attorney or agent."

Subdivision (2) of 10.2(y) regulates contingent fee agreements, which are prohibited except under certain specified conditions, including the indigence of the claimant.

In answer to this Committee's questionnaire, the Director of Practice, Bureau of Internal Revenue, stated in part that Section 10.2(y)

> "is designed to prevent champerty and to the end of serving that purpose we have followed the policy of withholding approval of wholly contingent fee agreements in the absence of some proof of indigence of client and the policy of withholding approval of partially contingent fee agreements unless client pays a fixed fee having substantial relationship to amount involved in tax controversy."

The department thought that the regulation of practitioners' fees was in the public interest. The reason for this belief was stated as follows:

> "It deters unscrupulous practitioners from bringing unmeritorious claims, hence saves the Department the expense of processing said claims and safeguards ignorant or unsuspecting taxpayers."

An undated circular bulletin on fee agreements issued by the Director of Practice states among other things as follows:

> "This office has ruled that the minimum or retainer fee shall not fall below 10 per cent of the maximum fee . . ."

Railroad Retirement Board

The Railroad Retirement Agency, an independent agency, with headquarters at the city of Chicago, administers two important laws, the Railroad Unemployment Insurance Act [28] and the Railroad Retirement Act.[29] It is interesting to note that practitioners' fees are regulated by the unemployment act but not by the retirement act. Section 5(i) of the Railroad Unemployment Insurance Act (45 U. S. C. § 355) provides that no counsel for a claimant under that Act shall "charge or receive for such services more than an amount approved by the Board or by the court

before whom the proceedings of the Board are reviewed." The Board has not adopted any regulations covering this matter and has limited itself to passing upon the fees submitted for approval. The General Counsel of the Board states that in approving such fees "the Board considers such factors as the amount of time and effort expended, the amount of benefits involved, and whether the fee was to be contingent upon the benefits being granted."

He also states:

> "The fees are not limited to a certain percentage of the amount in issue, and the Board considers all pertinent facts in the particular case when passing upon the fee to be charged. During the past three years the fees approved have ranged from approximately 5 per cent to almost 22 per cent of the benefits involved; in some cases a fee has been approved even though the efforts of counsel did not result in any increase in benefits to the claimant."

Accordingly, the Board is more liberal in fixing fees than is the case under some of the statutory provisions *e.g.* Trading with the Enemy Act [30] and the Settlement of Mexican Claims Act of 1942 [31] which limit fees to 10 per cent of the amount of the property or claim recovered. The Railroad Unemployment Insurance Act, like many other statutes with fee restrictions cover attorney and laymen by the same provision. The General Counsel, like the top lawyers of most agencies, believes that the restrictions with respect to fees are beneficial. [He states, moreover that only, a very small percentage of claimants retain lawyers. The administration of the statute was intended to be simple.]

Securities and Exchange Commission

The Securities and Exchange Commission exercises control of legal fees because of its regulation of expenses in connection with the sale of securities under the Securities Act of 1933 [32] and under the Public Utility Holding Company Act of 1935.[33]

Civil Aeronautics Board

The regulation of legal fees by the Civil Aeronautics Board also arises as the result of other authority. Section 406 of the Civil Aeronautics Act provides for the fixing of rates of compensation for the transportation of mail, including subsidy for developmental purposes.[34] The carrier's need is determined on the basis of "honest, economical, and efficient management." In several cases the Board has disallowed certain amounts of legal expense because it found such payments excessive for rate-making purposes and hence decided that the expense incurred should not be underwritten with mail pay.

The authority of two independent agencies, SEC and CAB, which indirectly affect attorneys' fees represent a new trend in Government regulation thereof.

Similarly, the Federal Housing Administration indirectly controls attorneys' fees by fixing maximum charges and fees which the mortgagee may collect from the mortgager.[35]

Small Business Administration

Section 219 of "The Small Business Act of 1955" requires an applicant for a loan or service to certify to the Administration the names of attorneys and others engaged in expediting applications for assistance and the fees paid or to be paid.[36] Section 102.4 of the regulations of the Administration provides that the Administration may require any agent and applicant to execute an agreement governing the compensation charged for services in any matter coming before the agency.[37]

The loan application form under Section 207(a) of the Act provides for a question regarding total compensation paid or agreed to be paid. The General Counsel of the Administration stated in answer to the Committee's questionnaire: "Although there are no specific standards or percentages, relating to practitioners' fees, it is the policy of this Administration not to permit fees which are unreasonable." [38]

Department of Commerce—Maritime Administration

Practitioners before the Federal Maritime Board are subject to regulation comparable to that provided by the Small Business Administration. The statement required to be filed by the representative of the shipbuilder or operator holding or applying for a contract under Section 807 of the Merchant Marine Act, 1936, as amended, 46 U. S. C. § 1225, pursuant to the Board's regulations, covers the nature of the compensation to an attorney. Fees charged clients by attorneys, included in the accounts of such clients before the agency, are examined and allowed to the extent that they are "fair and reasonable." [39]

Article 20 of the Second Seamen's War Risk Policy insured up to $5000, the Master, officers and crew of a wartime merchant vessel without charges against certain perils of the sea. Article 20 limited the amount of fees payable to an attorney agent or other person acting on behalf of an insured or beneficiary to $25 in any one case. The Administrator of the War Shipping Administration could approve a larger amount if the nature of the services warranted it. If the insurance claim was litigated, the Court would fix the fee.

Veterans Administration

The fees which may be charged by attorneys for services in connection with claims for benefits under statutes administered by the Veterans' Administration are strictly regulated by statute.

The statute authorizes the Administrator of Veterans' Affairs to determine and pay fees in allowed claims to agents or attorneys authorized to practice before the V. A. and to prescribe rules governing such fees, which shall not exceed $10 in any one claim and in all cases shall be deducted from the monetary benefits allowed.[40] However, the schedule of fees paid to local counsel employed by the Veterans Administration when fulfilling its duties to incompetent veterans, minors, and persons under legal disability far exceeds the amount allowed by law to an attorney representing a claimant against the Administration. Certain organizations may present such claims, provided their accredited representatives receive no fees for services rendered.

Moreover, the employment of a lawyer for an applicant for a pension is directly discouraged by statements appearing on the face of various official forms of the Administration. To like effect is a notice printed on the reverse of the form of the National Service Life Insurance Certificate.

State Department

This department once was responsible for similar practices. According to Reginald Parker, applicants who employed lawyers in visa matters formerly were required by the State Department to sign a form whereby they took notice, in so many words, of the fact that the Department preferred to deal with the applicants directly.[41]

Other Federal Statutes

Many other Federal and state statutes authorize an administrator or board to prescribe the attorneys' fees, including *Longshoremen's and Harbor Workers Compensation Act*,[42] the *Railroad Unemployment Insurance Act*,[43] *War Claims Act*,[44] *Trading with the Enemy Act*,[45] the *War Risk Hazard Act*,[46] and the *Bankruptcy Act*.[47]

State Laws

It is interesting to note that the administrative agencies universally authorized by State legislation to regulate attorneys' fees are the Workmen's Compensation Commissions and the Unemployment Compensation Boards or a comparable body or official.[48] While varying in some of their provisions, Workmen's Compensation and Unemployment Compensation Laws have been enacted in all 48 states. The former laws to a great extent have provided the substitute remedy for tort actions as remedies for injuries received by workmen in the course of their employment, and the latter were enacted after the passage of the Federal Social Security Act. The Workmen's Compensation Laws also sometimes limit the attorneys' fees for legal services in litigation. For example the Wyoming provision provides for 10 per cent of the amount received

"but in no event to exceed $100" and $300 is the maximum fee for a case in the Supreme Court.[49]

Other limitations in such state laws are as follows:

Alabama—maximum 15 per cent of award.

Arkansas—25 per cent on first $1,000 plus 10 per cent of all in excess of $1,000.

Kentucky—15 per cent on first $1,000 plus 10 per cent of all in excess of $1,000.

Miss.—Maximum 25 per cent of award, but not limited for superior court services.

New Mex.—10 per cent of amount of recovery, except court may allow an additional fee upon successful prosecution of trial or appeal.

Ohio—reasonable fee to be fixed by court. Maximum 20 per cent of award up to $5,000 and 10 per cent on any amount over $500, with a maximum of $500, may be allowed claimant's attorney on appeal, and taxed as costs against unsuccessful party. Commission may fix rules regarding attorneys' fees and fix amount thereof in case of controversy.

Tenn.—maximum of 20 per cent of recovery on award fixed by court.

Tex.—Maximum 15 per cent of first $1,000 recovered and 10 per cent of any recovery in excess of $1,000.

Wash.—Maximum 10 per cent, maximum 35 per cent of increase of award secured by attorneys' service.

West Virginia—Maximum 500, or 25 per cent of total award or increase of award.

Wisconsin—Unless previously authorized by Commission maximum of 20 per cent of compromise, judgment award, or collection. In case of admitted liability where there is no dispute as to amount of compensation due, and in which no hearing or appeal is necessary, fee shall not exceed 10 per cent, maximum $100.

Reminiscent of the origin of the restrictions of attorneys' fees is a provision of the Oklahoma laws (now practically obsolete) making it a criminal offense to charge or receive a fee, either directly or indirectly, for the procuring of a Confederate pension for anyone entitled thereto.[50] An example of a fairly recent statute prohibiting the charging of any fees for services in representing an applicant for or recipient of social security assistance was enacted by Oklahoma in 1951.[51] A still more recent statute enacted by the same state provides:

> "It shall be lawful for an attorney to contact for a percentage or portion of the proceeds of a client's cause of action or claim not to exceed fifty (50%) per centum of the net amount of such judgment as may be recovered, or such compromise as may be made, whether the same arises ex contractu or ex delicto, and no compromise or settlement entered into by a client without such attorney's consent shall affect or abrogate the lien provided for in this chapter. Provided that all such contracts in personal injury or wrongful death cases including, but not restricted to, cases in which jurisdiction is in the Industrial Commission, shall be void and unenforceable (1) if secured as a result of the intervention of any laymen, association, or corporation for compensation, or promise of compensation, or anticipation of gift, compensation or hope of reward, or (2) where any laymen, association or corporation has a direct or indirect interest in, or growing out of, any judgment arising out of such claim recovery or compensation from, or settlement of any such claim." [52]

This law is illustrative of the increasing regulation, directly or indirectly of contingent fees. Abuses by a few lawyers, often in cooperation with laymen, have given rise to some of these restrictive measures.

Conclusion

There is no doubt that fee restrictions imposed by federal administrative agencies adversely affect the economic position of the attorney-at-law, already adversely affected by the post-World War II economic trend.[53]

However, this result is not sufficient, in and of itself, to warrant investigation and recommendation by this Committee. The only justification for such investigation and recommendation in this field lies in the fact that such administrative regulation of legal fees adversely affects the rights of

persons having legal problems before legal problems before federal departments and agencies.

Our survey indicates a conscious policy on the part of many agencies to discourage the representation of private persons by attorneys-at-law. For example, the Treasury Department takes the gratuitous position that it is the protector of the rights of the taxpayers when it argues that regulation of practitioner fees "deters unscrupulous practitioners from bringing unmeritorious claims [and] hence saves the Department the expense of processing said claims and safeguards ignorant or unsuspecting taxpayers." Whatever the public position on this matter taken by an administrative agency, the fact is that the interest of the Government is often adverse to that of the private citizen who seeks a right, privilege, benefit or immunity from the agency or department concerned.

With the possible exception of those agencies which dispense statutory benefits of small amount and which consider legal fees in rate making, no justification appears to exist for statutory or administrative limitations on legal fees. At the very most, such authority over fees generally should rest with the courts rather than in an administrative agency.[54]

As a first step in dealing with this problem, it is recommended that those departments and agencies which limit fees should be approached with a view to clarifying their position on the matter. In obtaining this objective the Federal Bar Association and the District of Columbia Bar Association, through their respective committees on Administrative Law, should be helpful. Should an unsatisfactory response be received from such an approach, then repeal of any regulations or statutory provisions affecting such controls should be sought.

The problem of administrative control over legal fees is closely linked with that of the unauthorized practice of law by lay practitioners before government agencies and departments. As such unauthorized practice is, of course, benefited by these restrictions, their removal should be sought as an integral part of any program to curtail the unauthorized practice of administrative law.

This committee recognizes that its recommendations require alerting the public to the dangers inherent in and actually resulting from the unauthorized practice of law before government agencies and departments and the limitation of legal fees thereby. A public relations program to effectuate this educational program is therefore required.

The public should also be informed of the disciplinary activities of the Bar and the channels opened by Bar Associations for the correction of unethical conduct by lawyers. It would be well to publicize the fact that the Bar has adopted definite standards for the fixing of fees. The growing number of restrictions on attorneys' fees demonstrates the extent to which the public confidence in the ethics of the legal profession has been undermined. The selfishness and unethical conduct of a few attorneys, often working with laymen, have harmed the whole profession to such an extent that many people apparently do not trust the profession solely with the task of disciplining its members by proceeding upon complaints concerning the charge of excessive fees. Perhaps a revitalized effort on the part of the Bar to curb unethical conduct is desirable—at least in some places.

The right to the assistance of counsel is safeguarded in criminal cases in the Federal Courts by the Constitution.[55] The Hoover Commission and its Task Force on Legal Services and Procedure have reaffirmed the right of every person compelled to appear before an administrative agency to be accompanied by an attorney or other qualified representative. The Commission would extend this privilege to the person appearing voluntarily.[56]

In the words of the late Justice Robert Jackson, lawyers have "a special trust and competence to safeguard every man's right to a fair trial on which every other right is dependent."[57] Arbitrary restrictions on attorneys' fees inevitably interfere with the fulfillment of this right.

Submitted on behalf of the Committee as a whole.*

THEODORE H. HAAS, *Chairman*
WILLIAM B. JONES, *Vice Chairman*

[1] In Italy, the lawyers' fees, both in litigation and in other matters, are controlled by statutory schedules and are subject to court supervision. The fees granted in litigated matters are smaller than in the United States, but are higher in other matters. Sereni, "The Legal Profession in Italy," 63 Harv. L. Rev. at 1005; Blanstein and Porter, *The American Lawyer,* p. 334 (1954). Fees or royalties are regulated in other countries, including England, but such plans have failed when tried in the United States. *The American Lawyer,* p. 35.

[2] While solicitors are seriously overworked, many members of the Bar are without adequate work. Templann, "The Future of the Legal Profession from an English Office Window," 25 Can. Bar Rev. 738, 740-1 (1947).

[3] "Moreover, a great part of the practice of law today does not take the lawyer or his client into the courts, but involves matters handled and instituted solely by administrative agencies." Cooper, Administrative Agencies and the Courts (1951). There is an increasing demand for special training of lawyers, including advocates before administrative tribunals. Stason, "The Law School, 1954-5," 53 Mich. L. Rev. (1954). See also, Mayers, *The American Legal System* (1955), pp. 403-5, 458.

[4] *The American Lawyer,* pp. 35, 56-58.

[5] *Note*: "The Privilege Argument: How It Has Fared in Constitutional Law," 40 Minn. L. Rev. 486 (1956).

[6] The number of claimants hereunder will exceed that in any other area. *The American Legal System,* p. 486.

[7] Five per cent, 60 Stat. 128 formerly 50 U. S. C. App. § 1751. This law has been terminated.

[8] Vom Baur, *Standards of Admissions for Practice before Federal Agencies* (1953), covers the origin of and practice by laymen and recent trend by agencies to restrict such practice.

[9] Parker, *Administrative Law* (1952), pp. 56-57. For a case which the author cites as constituting an abuse of discretion by the Tax Court in the effective denial of legal representation to a taxpayer, see *Thomas* v. *Commissioner of Internal Revenue,* 185 F. 2d 851 (C. A. 6) (1950).

[10] Haas, "Contract Procedures for Obtaining Additional Compensation under Government Construction Contracts," 24 Fordham L. Rev. 535, 536 (1955-56).

[11] Aversion to counsel may be manifested in other ways, such as by excluding counsel, or by indicating a preference that no counsel be present, or by supervising counsel to such an extent as to impair their effectiveness.

[12] 28 U. S. C. 2671 *et seq.* (62 Stat. 984).

[13] Dept. of Army Regulations Mar. 21, 1951, AG 25-70, par. 10, provides for the fixing of such fees by the Secretary of the Army or his designee only on written request of the claimant or his attorney.

[14] Bar Bulletin, N. Y. County Lawyers Association, 7 (Sept. 1955).

[15] Rep. Comm. Ind. Affairs, 1854, p. 17.

[16] 17 Stat. 136.

[17] 16 Stat. 570.

[18] 48 Stat. 984, 25 U. S. C. sec. 461 *et seq.;* Cohen, *Handbook of Federal Indian Law,* pp. 280-2 (1943).

[19] Pursuant to statutory authority found in 25 U. S. C. 81 *et seq.* and 476 regulations pertaining to attorneys' fees for claims and general counsel representation of Indian tribes have been adopted, see 25 CFR Parts 14 and 15. For a decision broadly construing such authority of the Secretary of the Interior, see Solicitor's Opinion M-36069, dated June 22, 1951. For importance of counsel to individual Indians, see Cohen, *op. cit. supra;* p. 162 *et seq.* (1942); *Senecal* v. *United States,* 208 F. (2d) 406 (9th Cir., 1953).

[20] Act of June 30, 1913, sec. 18, 38 Stat. 77, 97, 25 U. S. C. § 85.

[21] 25 C. F. R. Parts 81 and 82; also sec. 25 U. S. C. sec. 375b.

[22] 25 C. F. R. Part 222.

[23] *Robert* v. *Anderson,* 66 F. 2d 874. Act of Mar. 3, 1893, sec. 1, 27 Stat. 631; 25 U. S. C. § 178.

[24] Section 292.6(a). This provision and other regulations, relating to enrollment and disbarment of attorneys and representatives are contained in Part 292, Title 8, C. F. R. These regulations are issued under the rule-making authority of the Attorney General set forth in section 103(a) of the Immigration and Nationality Act (66 Stat. 173; 8 U. S. C. 1103(a)), and interpret or apply section 292 of that Act (66 Stat. 235; 8 U. S. C. 1362).

[25] 39 Stat. 742, 5 U. S. C. sec. 751 *et seq.,* as amended, the last being by Act of October 14, 1949, 63 Stat. 854.

[26] Sec. 3 of the Act of July 7, 1884, 23 Stat. 258; 5 U. S. C. 261.

[27] Department Circular No. 230 (Revised Dec. 7, 1951) relating to the Laws and Regulations governing the recognition of agents, attorneys and other persons representing claimants before the Treasury Department and offices thereof.

[28] 45 U. S. C. 351 *et seq.*

[29] 45 U. S. C. 228a *et seq.*

[30] 40 Stat. 411; 50 U. S. C., App. 16, 20.

[31] 56 Stat. 1060, sec. 5(c). The work under this Act has been completed and the Mexican Claims Commission is no longer in existence.

[32] 15 U. S. C. 77aa

[33] 15 U. S. C. 79g(d)(4); also under other provisions of this act relating to the acquisition of securities or utility assets (15 U. S. C. 79j(b)(2)) and relating to the approval of plans for holding companies to comply with the law's integration and simplification provisions. See *S.E.C.* v. *Drexel & Co.*, 348 U. S. 341, 348 (1950); and also relating to the approval of reorganization fees under section 11 of the Act, under which the most difficult fee problems arise.

[34] 49 U. S. C. § 486

[35] Sec. 221.26, Operations Letter No. 183, issued by Deputy Administrator of FHA, dated February 13, 1956.

[36] The Small Business Act of 1953 was amended by the Act of August 9, 1955, Public Law 268, 84th Cong., 1st Sess.

[37] 13 CFR.

[38] The Bureau of Foreign Commerce, Department of Commerce provided by regulation that a person may be excluded from practice for charging fees wholly contingent upon the granting of an export license and the amount or value thereof. 15 CFR § 384.2. This regulation, which is based on Section 3(a) of the Export Control Act of 1949, as amended, 50 U. S. C. App. § 2023(a), and provides that reasonable fees may be allowed by the Bureau.

[39] The record must establish that the amount claimed represents the reasonable value of the services. Comp. Gen. B-63855, May 28, 1948.

[40] 49 Stat. 2031, 2032; 38 U. S. C., Secs. 101, 102. For an example of the application of this law see *Hines* v. *Lowrey*, 305 U. S. 85 (1938).

The lawyers' fee by statute in such cases is limited to $25. 38 U. S. C. 111. However, by regulations of the Administrator a lawyer's fee for increase of a veteran's claim for benefits is $2. Rule 5655 of "Rules and Regulations Regarding Recognition of Organizations, Accredited Representatives, Attorneys, Agents, and Information Concerning Fees, Public No. 844, 74th Congress, "Information Bulleting 2-11 (a), Office of the Solicitor, November 14, 1947.

The American Bar Association favors the repeal of the V. A. limitations. 75 ABA Rep. 114-115.

As this report goes to press, the Committee has learned of two other administrative restrictions by Federal Agencies. Counsel for a large insurance company advised that the V. A. has decided to limit fees and commissions in the foreclosure of real estate loans guaranteed under the Servicemen's Readjustment Act of 1944, as amended, 38 U. S. C. § 694, *et seq.* An aggregate fee and commission will be allowed as follows: Maryland, $150; Virginia, $125, and District of Columbia, $75. The same counsel also reported that the Civil Service Commission has "recently" notified certain private associations of government employees which were in the process of transferring their assets and liabilities to the government under Section 10 of the Government Employees' Group Life Insurance Act of 1954 of its willingness to provide, without cost, certain legal services and otherwise restricting legal fees to the *lesser* of (a) twenty dollars an hour actually spent by the lawyer himself (b) $2,500 or (c) 25% of the net assets of the association.

[41] Administrative Law, p. 51 (1952).

[42] 44 Stat. 1438, 33 U. S. C. A. § 928.

[43] 52 Stat. 1001, as amended by 60 Stat. 738, 45 U. S. C. A. sec. 355(i).

[44] 62 Stat. 1240; 50 U. S. C. A. app. § 2001.

[45] 40 Stat. 411; 50 U. S. C. A., app., § 1.

[46] 56 Stat. 1034; 42 U. S. C. A. sec. 1714; see also 62 Stat. 1246.

[47] The present text of which is in 11 U. S. C. A. § 505.

[48] See for examples: Maryland Workmen's Compensation Annotated Code Art. 101, sec. 58; Unemployment Compensation *id.* Art. 95A, sec. 15(b).

Mass. W. C. Chap. 152, sec. 13, which enables the Board to order repayment of any excess to the fee it approves. Gritta's case, 241 Mass. 526, 135 N. E. 874; U. C. Chap. 151A, sec. 37.

Mont. W. C. Revised Code of Montana (1947) sec. 92-827; U. C. *id.*, sec. 87-142.

North Carolina W. C. General Statutes, sec. 97-90. U. C. *id.*, sec. 96-18.

Oklahoma W. C. 85 Oka. Stat. sec. 30 (1951); but decision of Industrial Commission is subject to judicial review; U. C. 40 *id.* sec. 22(b).

South Carolina W. C. sec. 72-19; U. C. sec. 68-353.

Utah Code Annotated 35-1-87 covers all cases coming before the Industrial Commission. The Supreme Court of Utah has construed this provision as authorizing the Commission to reduce but not to increase the fee agreed to by the parties. *Ellis* v. *Industrial Commission*, 91 Utah 432, 64 P. 2d 363; *Thatcher* v. *Iudustrial Commission*, 207 P. 2d 178.

Virginia W. C. Code Annotated sec. 65-98 (1950); U. C. *id.*, sec. 60-107.

[49] 4 Wyo. Compiled Statutes, 1945, sec. 72-130. Some states have laws authorizing the courts to fix a reasonable fee for attorneys in civil actions for wages claims (minimum wages). See for example Maryland Chap. 151A, sec. 37, Montana Revised Codes of Montana (1947), sec. 45-602. The courts perform that function also in many states concerning fees for services to minors, incompetents, and in probate proceedings.

[50] 72 Okla. Stat. sec. 139 (1951). A modern approximate equivalent of this law is the New York State law providing that no attorney may receive any compensation for his services in prosecuting any claim for any bonus under the statute. Unconsolidated Laws, sec. 10205.

[51] 56 Okla. Stat. (1951) sec. 182.

[52] 5 Okla. Stat. (1953 Supp.) sec. 225(b).

53 See Kafoglis, *Economic Condition of the Legal Profession in Ohio,* 28 Ohio Bar 866 (Sept. 12, 1955). "Available reports indicate that earnings in the legal profession have not kept pace with the earnings of other groups in the economy. * * *" (867). Of 51 selected industries classified by percentage gains in average annual earnings per full time employee from 1929 to 1951, legal services ranked 46th, with a percentage gain of 77%. This compares with a percentage gain of 131% for all industries on the list (868-869). Among professional non-salaried groups, lawyers ranked after physicians and dentists.

54 For example, the courts are authorized to award fees in excess of 10%, the limitation of fees which may be awarded administratively under the Trading with the Enemy Act. The standard of reasonableness is common in other fields of law, e. g. "reasonable man," "reasonable notice," "reasonable period of time," etc.

55 *United States* v. *Holton,* 227 F. 2d 886, 895-7 (C. A. 7, 1956). If there be reasonable doubt as to whether the court has left counsel enough time to prepare a case, that doubt must be settled in the prisoner's favor. *Glasser* v. *United States,* 315 U. S. 60, 62 (1942); *Williams* v. *Kaiser,* 323 U. S. 471 (1945). However, while the importance of counsel has been increasingly recognized by the Supreme Court, only a few state constitutional provisions have been construed to require the state to provide counsel. While the right to counsel has been universally recognized in administrative enforcement proceedings, the right to be furnished counsel at public expense has not been recognized anywhere. Mayers, The American Legal System, 138, *et seq.*; 393, *et seq.*, 424.

56 Fuchs, "The Hoover Commission and Task Force Reports on Legal Services and Procedure," 31 Ind. L. J. 9, *et seq.* (1955).

57 Jackson, "The American Bar Center: A Testimony to Our Faith in the Rule of Law," 40 A. B. A. J. 192 (1954).

* Special recognition should be given to the contributions to this report made by the Committee on State Administrative Law and by two members of the Committee: Courts Oulahan and Ruth Smalley.

TO EACH MEMBER OF THE ADMINISTRATIVE LAW SECTION:

It will be of the greatest assistance to your officers in selecting members for the committees of the Section in the forthcoming year if you will designate the committee or committees on which you would be willing actively to participate. Please specify your order of preference, numerically in the boxes opposite such committees in the following list. In this way it will be possible to make assignments more in accordance with preferences and give opportunity to serve to a greater number.

COMMITEES OF THE SECTION

Committees on Particular Federal Agencies or Activities

- ☐ Agriculture
- ☐ Aviation
- ☐ Communications
- ☐ Comptroller General—General Accounting Office
- ☐ Food and Drugs
- ☐ Gas and Electric Power
- ☐ Immigration and Nationality
- ☐ Indian Matters
- ☐ Interstate Commerce Act
- ☐ Labor
- ☐ Maritime Transportation
- ☐ Mobilization
- ☐ Natural Resources and Interior Affairs
- ☐ Postal Matters
- ☐ Public Contracts
- ☐ Securities
- ☐ State Department Matters
- ☐ Trade Regulations
- ☐ Treasury Department Matters

Committees on Particular Legislation or Proposals

- ☐ Administrative Practitioners
- ☐ Administrative Procedure Act
- ☐ Good Faith Reliance Act
- ☐ Hearing Examiners
- ☐ Improvement of Administrative Procedures
- ☐ Judicial Review

General and Miscellaneous Committees

- ☐ Annual Survey of Administrative Law
- ☐ State Administrative Law

* * * * *

Please indicate here whether you have or have not served on the requested Section committee.

_____

Please indicate here the approximate amount of time you would be willing to devote to the requested committee assignment. .....

Please sign your name and address and mail before August 15, 1956, to Patricia Collins, Secretary, Department of Justice, Washington 25, D. C.

..... Name

..... Address